



## **MINUTES**

### **SELECT BOARD**

**10/06/2020**

Present: Select Board Member, Bernard W. Greene, Select Board Member, Nancy S. Heller, Select Board Member, Heather Hamilton, Select Board Member Raul Fernandez, Select Board Member, John VanScoyoc

#### OPEN SESSION

Question of entering into executive session for the reasons described in items 2 and 3.

Chair Greene declared that the Board will enter into executive session to discuss litigation strategy with respect to certain matters pending at the Department of Industrial Accidents because an open meeting may have a detrimental effect on the bargaining or litigating position. And to review/vote on executive session minutes. The Board will reconvene in open session.

#### EXECUTIVE SESSION - LITIGATION

Proposed Executive Session for the purpose of discussing litigation strategy with respect to certain matters pending at the Department of Industrial Accidents.

#### EXECUTIVE SESSION - EXECUTIVE SESSION MINUTES

For the purpose of approving the following Executive Session minutes:

July 21, 2020

August 25, 2020

September 2, 2020

On motion it was,

Voted to enter into executive session.

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### ANNOUNCEMENTS/UPDATES

Chair Greene: some sad news on the passing of Frank Caro. He and his wife Carol are giants in this town, well respected did so much for the town. Frank was involved in numerous boards and committees and an advocate for senior residents. The Board members offered their condolences

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and accolades. The community would like to fund raise for a memorial bench in honor of Frank. Town Administrator Kleckner: The Governor announced moving forward on COVID phase 3, for communities not in a red zone. This involves indoor/outdoor performances, recreation facilities, gyms museums etc.

Halloween Trick or Treating; usually certain streets are closed, notably Beals Street, a popular venue to trick or treat. We will not be allowing block parties and/or street closing this year under the guidance of the CDC; we will issue a press release tomorrow. The town is not encouraging trick or treaters, but not banning it.

The town/schools are working on a COVID community testing program. This would be at no cost, insurance would be billed.

Ballots for the election have arrived and are going out

#### PUBLIC COMMENT

1. Joe Polak, spoke about barriers on Longwood Avenue. There has been a tremendous amount of complaints and strong opponents to this. There is concerned on access to parking. He feels like a piece of their living turf has been taken away without notification. Vice Chair Hamilton added this is part of the shared streets program spoke about in April.
2. Alex Johnson spoke on Sanctuary Medicinal, and as an employee he spoke out on violations. As a result, he received a letter placing him on leave for violations and banning him from the property. He added that he has been targeted by the Brookline Police Department.
3. Donelle O'Neal spoke to support Mr. Johnson who needs an advocate, he was treated unfairly. He spoke on violations occurring and was targeted no one helped him. Show that he does matter. He would like the Board to contact the CCC. Chair Greene added that the Select Board and the Town can't become involved in businesses unless there is a violation of their license.
4. Susan Park read Donelle' statement as he is trying to help the town. This relates to cleanliness and safety concerns. Mr. Johnson shared something and then he gets fired. How are people protected from whistleblowers?

#### MISCELLANEOUS

Question of approving the meeting minutes from September 29, 2020.

The minutes were held.

#### CONTRACT

Question of approving PW/21-02 "Repair of Bituminous Concrete Patches" with Cassidy Corp., 54 Cummings Park Suite 304, Woburn MA 01801 in the amount of \$190,200.00.

On motion it was,

Voted to approve PW/21-02 "Repair of Bituminous Concrete Patches" with Cassidy Corp., 54 Cummings Park Suite 304, Woburn MA 01801 in the amount of \$190,200.00.



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Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### CHAPTER 90 PROJECT REIMBURSEMENT

Question of approving the submittal of a Chapter 90 Project Reimbursement and Final Closeout Report with the Massachusetts Department of Transportation for PW/18-24 Reconstruction of Pearl Street and PW/18-25 Reconstruction of Babcock Street.

On motion it was,

Voted to approve the submittal of a Chapter 90 Project Reimbursement and Final Closeout Report with the Massachusetts Department of Transportation for PW/18-24 Reconstruction of Pearl Street and PW/18-25 Reconstruction of Babcock Street.

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### CDBG SUB-RECIPIENT AGREEMENTS

1. Question of approving and authorizing the Chair or his designee to execute the following FY 2021 (FFY 2020) CDBG Sub-recipient Agreements:

Council on Aging Brookline TRIPPS Program 1824G021 510102 \$30,000.00  
Brookline for Racial Justice and Equity Work Connections Program - Civil Service Exams  
1855G021 558064 \$10,000.00  
Brookline Center for Community Mental Health BCCMH Case Management Program 1854G021  
558062 \$73,400.00  
Steps to Success, Inc. Work Connections for Youth 1803G021 558021 \$65,463.00  
Brookline Housing Authority Brookline ESOL Program 1830G021 558070 \$15,000.00  
Brookline Housing Authority Next Steps Program 1839G021 558040 \$12,000.00  
Brookline Housing Authority BHA Resident Health and Safety 1807G021 6C0017 1807G016  
6C0055 \$343,568.00

2. Question of approving and authorizing the Chair or his designee to execute an amendment to the agreement dated June 16, 2020 between the Town of Brookline and the Brookline Food Pantry for an increase of \$75,000 in FY 21 CDBG funds for the Food Inventory and Delivery Program:

Brookline Food Pantry – CDBG – CV (6/16/20) Food Inventory and Delivery Program 1720SGA4  
558102 \$160,663.00  
Brookline Food Pantry – FY 21 CDBG Food Inventory and Delivery Program 1853G021 558102  
\$75,000.00  
PROGRAM TOTAL: \$235,663.00

3. Question of approving and authorizing the Chair or his designee to execute a FY 2021 Home Investment Partnerships Program (HOME) Agreement between the City of Newton, acting as the lead entity for the WestMetro HOME Consortium, and the Town of Brookline.

Chair Greene noted that these fund allocations have previously been reviewed.

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On motion it was,

Voted:

1. To approve and authorize the Chair or his designee to execute the following FY 2021 (FFY 2020) CDBG Sub-recipient Agreements:

Council on Aging Brookline TRIPPS Program 1824G021 510102 \$30,000.00

Brookline for Racial Justice and Equity Work Connections Program - Civil Service Exams

1855G021 558064 \$10,000.00

Brookline Center for Community Mental Health BCCMH Case Management Program 1854G021 558062 \$73,400.00

Steps to Success, Inc. Work Connections for Youth 1803G021 558021 \$65,463.00

Brookline Housing Authority Brookline ESOL Program 1830G021 558070 \$15,000.00

Brookline Housing Authority Next Steps Program 1839G021 558040 \$12,000.00

Brookline Housing Authority BHA Resident Health and Safety 1807G021 6C0017 1807G016 6C0055 \$343,568.00

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PROGRAM TOTAL: \$235,663.00

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Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

CALENDAR

#### COMMON VICTUALLER/ENTERTAINMENT LICENSE

Question of approving the application of a new Common Victualler for Seoul Society INC d/b/a FIYA Chicken at 1024A Commonwealth Ave. Hours of operation will be Sunday – Saturday 10:00 am to 12:00 am.

Question of approving the application of an entertainment license for Seoul Society INC d/b/a FIYA Chicken at 1024A Commonwealth Ave. Entertainment will consist of radio Sunday – Saturday 10:00 am to 12:00 am.

Applicant Raymond lee reviewed the restaurant which will specialize in fried chicken.

On motion it was,

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Voted to approve the application of a new Common Victualler for Seoul Society INC d/b/a FIYA Chicken at 1024A Commonwealth Ave. Hours of operation will be Sunday – Saturday 10:00 am to 12:00 am.

Voted to approve the application of an entertainment license for Seoul Society INC d/b/a FIYA Chicken at 1024A Commonwealth Ave. Entertainment will consist of radio Sunday – Saturday 10:00 am to 12:00 am.

\*condition upon receiving the final reports from the Fire Department

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### CHANGE IN MANAGER AND ALTERNATE

Question of approving the application for Change of Manager of Record from Arturo Elescano to Maria L. Lopez Ramos for Cantina Hospitality, LLC d/b/a Taco Bell at 872 Commonwealth Ave.

Question of approving the application for Alternate Manager Jacquelyn Boisvert for Cantina Hospitality, LLC d/b/a Taco Bell at 872 Commonwealth Ave.

Jacquelyn Boisevert and Maria Lopez were present. Ms. Boisvert spoke on their liquor policies and will meet the Brookline Police liquor officer. She gave an overview of their ID practices and how they will monitor alcohol servings.

Ms. Lopez's qualifications were reviewed.

On motion it was,

Voted to approve the application for Change of Manager of Record from Arturo Elescano to Maria L. Lopez Ramos for Cantina Hospitality, LLC d/b/a Taco Bell at 872 Commonwealth Ave.

Voted to approve the application for Alternate Manager Jacquelyn Boisvert for Cantina Hospitality, LLC d/b/a Taco Bell at 872 Commonwealth Ave.

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### EXTENSION OF EXISTING NOISE BY-LAW WAIVER

Question of approving the Noise Bylaw Waiver request for the Brookline High School Expansion project to extend from October 22, 2020 through April 22, 2021.

Chair Greene explained that the Board has requested for updates periodically on this project.

Board member Heller noted that there are some concerns because over the next several weekends the MBTA is allowing us to get some work done at the site.

Rob Mulligan, Skanska, gave an update on the project. The heavy work that can be loud at times is behind us, we are working on the exterior facade to close the building in.

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Board member VanScoyoc noted that Bington Rd residents have supported this project. That said, there are unavoidable disruptions.

Matt Oudens submitted a comment:

I unfortunately can't stay on the call tonight but wanted to offer a comment for your consideration on the BHS project's Noise Bylaw waiver request on tonight's agenda. My family and I live at 26 Brington Road, just across the street from the new building on Cypress Street and Brington Road. We (along with our Brington Road neighbors) have been supportive of the project from the beginning but the residents of our street also bear the biggest brunt of the effects of construction. Construction activities occur every day, including weekends.

Ray Masak, Building Department, gave a brief update on the project. It was noted the importance of getting things done when the MBTA allows; this is a short window of time.

On motion it was,

Voted to approve the Noise Bylaw Waiver request for the Brookline High School Expansion project to extend from October 22, 2020 through April 22, 2021.

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### GATEWAY EAST UPDATE AND NOISE CONTROL BY-LAW EXEMPTION PUBLIC HEARING

*Vice Chair Hamilton stepped out 7:05 pm*

DPW Commissioner Gallentine updates the Select Board on the construction progress at the Gateway East Transportation Improvements Project, and anticipated schedule through completion; and

Question of issuing a Special Permit for Exemption from the Noise Control By-Law (Article 8.15) to MDR Construction Co., Inc., under contract with MassDOT Highway, during the hours of 7:00PM and 5:00AM, Weeknights Only (Mon-Fri), between the dates of Mon, Oct 12 and Mon, Nov 2, 2020, in order to carry out final roadway paving and the installation of pavement markings, anticipating further that the paving is expected to be a 3-night operation and markings a 5-night duration, both of which are weather dependent and subject to unforeseen equipment failures or construction sequencing delays. The Contractor shall be permitted to carry out the prescribed night work within this 15-weeknight calendar window only, subject to 48-hour Notification of Abutters and Public Safety.

Commissioner Of DPW, Erin Gallentine, gave a presentation. This request is related to final paving and road markings. She gave a review of the planning process to knit together a neighborhood and make the corridor safer for pedestrians and cyclist.

Public hearing:

Hugh Mattison asked about the trees.

Commissioner Gallentine gave a brief review of the trees. The project chose trees that will thrive; they could take 5 years to mature.

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On motion it was,

Voted to approve the Special Permit for Exemption from the Noise Control By-Law (Article 8.15) to MDR Construction Co., Inc., under contract with MassDOT Highway, during the hours of 7:00PM and 5:00AM, Weeknights Only (Mon-Fri), between the dates of Mon, Oct 12 and Mon, Nov 2, 2020, in order to carry out final roadway paving and the installation of pavement markings, anticipating further that the paving is expected to be a 3-night operation and markings a 5-night duration, both of which are weather dependent and subject to unforeseen equipment failures or construction sequencing delays. The Contractor shall be permitted to carry out the prescribed night work within this 15-weeknight calendar window only, subject to 48-hour Notification of Abutters and Public Safety.

Aye: Bernard Greene, Nancy Heller, Raul Fernandez, John VanScoyoc

Absent for vote: Heather Hamilton

#### BOARDS AND COMMISSIONS - INTERVIEWS

The following candidates for appointment/reappointment to Boards and Commissions will appear for interview:

##### Housing Advisory Board

Rita McNally

Rita McNally is applying for reappointment. She is a Board member of BIC and the CDBG committee. She spoke on efforts to take a serious look at the housing production plan, expanding diversity and helping the senior populations. She would like to continue working on finding ways to keep neighborhood integrity and stability while adding affordable housing. Also, provide housing to protect women, children and teenagers.

##### Economic Development Advisory Board

Cliff Brown

Cliff Brown is applying for reappointment. He has worked on the 5 year economic development plan, and has worked on various warrant articles including the Welltower development project. Mr. Brown serves as the liaison between EDAB and the Advisory Committee. Mr. Brown works in finance.

*Vice chair Hamilton returns 7:20 pm*

#### OUTDOOR SEATING EXTENSION

Staff update on the status of the Town's outdoor seating program and possible vote to approve the Amended Approval Procedure for the Temporary Extension of Licensed Premises for Outdoor Seating (Commonwealth of Massachusetts COVID-19 Order Nos. 35 and 50) in order to extend outdoor seating subject to the Guidelines outlined Town staff's October 1st 2020 Extension of Outdoor Dining memo.

Meredith Mooney, Economic Development Planner, gave a PowerPoint presentation. Prior to COVID the town had 38 restaurants with outdoor seating; that number is now at 68. The feedback for the

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program has been positive.

- Expanded Outdoor Seating Timeline
- Key Considerations for Extended Outdoor Seating Guidelines
- Cold weather outdoor seating guidelines.
- Compliance with Outdoor Heating and Electrical Elements Requirements
- ❖ Electric Heaters: Allowed on case-by-case basis
- ❖ Propane Heaters: Will require a permit through the Fire Department's Liquid Propane Outdoor Patio Heating Appliance Use and Storage Pilot Program
  - Properly secured tents and canopies
  - Adequate Maintenance of the Public Way
  - Compliance with Semi-Permanent Outdoor Seating Structure Requirements
  - Updated Documentation Required
- ❖ Certificate of Liability Insurance
- ❖ Abutter Approval Letter
- ❖ Temporary License Agreement

The Board noted the importance of these business owners being heard during these difficult times.

Todd Kirrane, Transportation Director gave a brief update on parking spaces and barriers to provide the outdoor seating.

Deputy Fire Chief Randolph added he looks forward to working with the business community on this pilot program.

Public comment:

David Leschinsky, Chair of the Coolidge Corner Merchant Association added that once COVID hit there was a tremendous amount of fear and concern on how businesses will survive. As we reopen we are pleased with the support of the town. Making use of outdoor spaces is a benefit to the community; he supports the proposed program.

On motion it was,

Voted to approve the Amended Approval Procedure for the Temporary Extension of Licensed Premises for Outdoor Seating (Commonwealth of Massachusetts COVID-19 Order Nos. 35 and 50) in order to extend outdoor seating subject to the Guidelines outlined Town staff's October 1st 2020 Extension of Outdoor Dining memo.

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### CHOKEHOLD BAN PUBLIC HEARING

Question of convening a public hearing on a proposal to amend the Police Department's Use of Force Policy to prohibit the use of Chokeholds.

Chair Greene began by saying the George Floyd killing prompted him to review our policy on chokeholds. He received many emails from residents demanding that the Town adopt chokehold

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bans. The police department says the officers do not train in this technique, none the less, it is important to include this in their policies. Some think this is symbolic, I think it provides value to be used in training to identify why this ban is important.

Vice Chair Hamilton added that this has clearly been in the works for a while, thank you Bernard for the work you put into this; you have tackled this a long time ago.

The Board spoke in support of the language version provided by Chair Greene.

Public hearing:

Scott Ananian TMM# 10 thanked Bernard for taking the initiative here. Other large communities have already implement "8 can't wait" policies. He supports the ban, but noted that Eric Garner was killed while chokeholds were illegal, it did not save his life. It is important that we put down in writing that this is not only banned, but not used.

Ryan Black added that it is up to the officer's discretion to determine possible death or bodily injury. Our legal system allows officers a wide range of discretion.

Michael Zoorob, spoke on the Police Reform Task Committee first reviewing the policy. De-escalation is already an essential feature of the policy. He feels Chair Greene's language is adequate.

Chair Greene added that the first step critical in the decision model is to first assess the situation to determine the best approach to take.

On motion it was,

Voted to Add new subsection (F) to section #6 (Prohibitions) of the Use of Force policy (Gen. Order 30.3 at p. 450 of the Brookline Police Department's online Policies and Procedures page).

#### 6. Prohibitions

F. The use of (i) chokeholds or strangleholds, which apply pressure to the trachea restricting airways and stopping breathing, or (ii) carotid-holds, which apply pressure to the carotid arteries restricting blood flow to the brain and causing loss of consciousness, or (iii) other techniques that cut off the supply of oxygen or blood to the brain or that prevent breathing, are prohibited, except if and when the officer reasonably believes that the officer or another person is at risk of imminent death or serious bodily injury and such technique is the only way to prevent such imminent death or serious bodily injury. Any use of this exception shall be reviewed in accordance with Section 12 of this Use of Force Policy.

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

#### WARRANT ARTICLES PUBLIC HEARING

Public Hearing, discussion and possible vote on the following Warrant Articles for the 2020 Fall Town Meeting:

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WA 8 - Expanded Housing Advisory Board Membership

WA 13 - Senior Property Tax Exemption - postponed

WA 21 - Non-Disclosure Agreements

WA 24 - General Bylaw Notifications

WA 25 - Zoning Notifications

#### WA 8 - Expanded Housing Advisory Board Membership

*Affordable housing is an essential issue in Brookline and its current composition does not allow for sufficient engagement by low and moderate-income residents and the town's housing vulnerable. These changes also allows for greater capacity to foster more affordable housing. The proposed language also continues to provide the HAB with time to create a succession plan for affordable housing continuity.*

This article changes the Housing Advisory Board (HAB) membership from 8 to 11 members.

David Lesochier, Co-petitioner, stated that the Committee on Town Organization and Structure (CTOS) is making some revisions to the article. CTOS says 8 members are sufficient, we say 11 are better; that is where it stands. If the committee went to nine members we are only adding one member for diversity. We don't feel that is enough representation.

Vice Chair Hamilton asked if the assumption is the current members don't understand what it is like to struggle with affordable housing. That is not an accurate assumption because we don't know people's stories. At any given moment our finances can change. This group is aware of the struggles.

Mr. Lesochier agreed, but added that their aim is to add an additional three members that would specifically demonstrate their knowledge of tenant issues with a diverse background.

Board member Fernandez added this is thinking of the future of that board and these perspectives are represented as we go forward. We have chaired committees with 11 members; we can figure it out.

Public Hearing:

Naomi Sweitzer TMM #10 spoke in favor of the article as revised by the petitioners. The main thrust is to add to the great group we have now, and to bake in for the future to add diverse views and experiences from those with housing insecurity.

Bonnie Bastien, TMM#5 added this comes down to reflect on the saying when organizing social justice work, "nothing about us without us". We can't make decisions for others without them having a seat at the table.

Roger Blood, Chair of the HAB said he feels it is important to limit membership to 9; that would double the lower/moderate income tenant representative from one to two. This Board requires certain skill sets that are critical. He added that HAB has not reviewed the Article yet.

Board member Fernandez added that that many may not understand the criteria required, but they can provide a vast array of skills.



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#### WA 21 - Non-Disclosure Agreements

*In the resolution of any claim, the Town shall not require as a condition, nor condition any offer upon an agreement that the claimant shall refrain from any statement concerning the terms of a settlement or the underlying claim, and the Select Board shall not enter into any agreement to resolve any claim in which the Town has sought such an agreement.*

*PROVIDED, HOWEVER, that the town may accept offers to resolve claims made under the Massachusetts Law Against Discrimination, Chapter 151B, the Massachusetts Privacy Statute, Chapter 214, Sec. 1B, the Massachusetts Law Against Sexual Harassment, Chapter 214, Sec. 1C, the Massachusetts Civil Rights Act, G.L. c. 12, §11H, the Massachusetts Equal Rights Act, G.L. c. 93, §102, the Massachusetts Leave Law for Victims and Family Members of Abusive Behavior, G.L. c.149, §52E, 42 U.S.C. Sec. 2000e (Title VII), 42 U.S.C. Secs. 1981-1988 or 42 U.S.C. Sec. 12101 (the Americans With Disabilities Act), in which the claimant seeks an agreement that the parties refrain from publicizing the facts and events that gave rise to the claim.*

*The Town shall report on its website all claims resolved during the previous six months within 90 days of the close of the fiscal year and 90 days of the end of the sixth month of the fiscal year.*

Petitioner Jonathan Margolis stated that this article promotes the values of open government. This is to ensure when the town deals with claims against anyone it is not hidden by a non-disclosure. Public records laws provide disclosures of documents, but settlement agreements don't say much about the facts; not much on what town employees can say. This is a matter of good government and values.

Board member Fernandez added that this is a nice update to the previous article. I am concerned that in a way it seeks to silence people who feel wronged by the town, and filed suit. The idea someone was harassed and not able to tell their story later on troubles me. I support this updated version.

Public hearing: no speakers.

#### WA 24 - General Bylaw Notifications

*This Article amends the General By-Laws to provide notice to non-property-owning residents and businesses (typically tenants). This Article intends to give all Brookline residents equal opportunity to be informed about planned and proposed actions that could affect their life as a tenant or resident of a street, neighborhood, or (more broadly) of the Town.*

*The words of our Town By-Laws define how we view the role of Town government and whom Town government serves. Property ownership is no longer a prerequisite for voting or holding office, yet our Town By-Laws consider only the owners of land—regardless of whether they live in the Town—and not resident tenants as deserving consideration in and notification for land use issues such as property demolition, noise control, and wetland protection.*

#### WA 25 - Zoning Notifications

*This Article amends the Zoning By-Law to provide notice to non-property-owning residents and businesses (typically tenants). This Article intends to give all Brookline residents equal opportunity to be informed about planned and proposed zoning actions that could affect their life as a tenant or resident of a street,*

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*neighborhood, or (more broadly) of the Town.*

Petitioner, Michael Zoorab made a presentation. These articles address renter notification because renters have the right to be informed on any nearby projects and zoning actions. The Town it can unify its notification process, without substantial effort by town staff. This is a way to have their voices heard. Other towns and cities are not making these notifications either, this is important and valuable and the hope is other communities will take notice.

Town Administrator Kleckner feels this is sensible since Brookline has more apartment housing than single family homes, and many residents are renters. He added that Towns have to have their local town bylaws approved by the Attorney General.

Deputy Town Administrator, Melissa Goff, added the Advisory Committee has some added language. Melissa AC added language. The petitioner has no objection to Advisory Committee language.

Public hearing: no speakers

#### WARRANT ARTICLES

Further review and possible vote on the following Warrant Articles for the 2020 Fall Town Meeting:

WA 16 - Recall of Elected Officials - no vote this evening

WA 28 - Fiscal Education for TMMs – waiting to review AC recommendations

WA 30 - Advisory Committee Recorded Votes - no vote this evening

WA 32 - Budget Equity – waiting to review new language

WA 33 - Resolution - Town/School Partnership – waiting to review new language

WA 37 - SC Stipends

On motion it was,

Voted Favorable Action 2-1-2 on article 37

Aye: Bernard Greene, Raul Fernandez

Against: Nancy Heller

Abstained: Heather Hamilton, John VanScoyoc

#### BOARDS AND COMMISSIONS - APPOINTMENTS

The following candidates for appointment/reappointment to Boards and Commissions:

Advisory Council on Public Health

This item was held

#### ELECTION WARRANT

Question of approving the Election Warrant for November 3, 2020.

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Jeff Nutting was present. The Board reviewed the election warrant. It was noted that Precinct 8 is still listed as the Coolidge Corner School not the Florida Ridley School to avoid confusion for the upcoming election. Mr. Nutting gave a brief update on the election process.

On motion it was,

Voted to approve the Election Warrant for November 3, 2020

Aye: Bernard Greene, Nancy Heller, Heather Hamilton, Raul Fernandez, John VanScoyoc

There being no further business the Chair adjourned the meeting at 9:50 pm.

ATTEST



**TOWN OF BROOKLINE**  
*Massachusetts*  
**DEPARTMENT OF PUBLIC WORKS**

*Erin Chute Gallentine*  
 Commissioner

## **Memorandum**

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To: The Select Board

From: Erin Gallentine, Commissioner of Public Works  
 Todd M. Kirrane, Transportation Administrator

Date: October 14, 2020

Re: Award and Execute a contract with Toole Design Group, LLC

Cc: Mel Kleckner, Town Administrator

Recommended for award and prepared for your signatures, please find attached a contract for the **Feasibility Study and Concept Design for the restoration of the Olmsted Historic Beacon Street Bridle Path with Toole Design Group, LLC** in the amount of \$199,880.

As the Board is aware, the Beacon Street Bridle Path Feasibility Study & Concept Design will determine the feasibility of the restoration of the historic Olmsted Bridle Path on Beacon Street, identify necessary relocations or removals of infrastructure and vegetation, and estimate the construction cost to provide for a 10 to 15 foot dedicated multi-use path for use by bikes, scooters, joggers, runners, wheelchairs, micro-mobility devices, and other non-vehicular transportation modes. The study of this project was rated one of the highest priority projects at the June 2019 Select Board Sustainability Summit, is included in the Transportation Board approved Green Routes Master Network Bike Plan, and has the support of local and regional advocacy groups from a wide array of perspectives including transportation and disability advocates.

The Department has selected Toole Design Group, LLC to perform this important, transformative study. As their attached proposal outlines, Toole is highly respected in the field and known as the national leader when it comes to planning, engineering, and landscape architecture for bicycle and micro-mobility transportation projects.

Through a combination of Town Meeting appropriated TNC Funds (\$117,757), a Massachusetts Supplemental Budget appropriation (\$50,000), a MassTrails Grant (\$32,000), and Town Bicycle Improvement CIP funds (\$123) staff has now assembled the necessary funds and are ready to move forward with the study.



APRIL 17, 2019

# **BROOKLINE BRIDLE PATH: FEASIBILITY STUDY AND CONCEPT DESIGN SERVICES**

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April 15, 2019

Todd Kirrane  
 Transportation Administrator  
 Town of Brookline, MA

**Re: Brookline Bridle Path: Feasibility Study and Concept Design Services**

Dear Mr. Kirrane:

Thank you for the opportunity to submit this proposal for the **Brookline Bridle Path Restoration**. **Toole Design Group** has reviewed the information you provided, and we have assembled a team and project approach that is specifically tailored to meet the Town's needs.

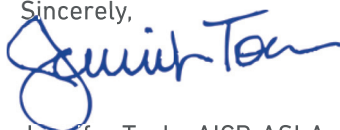
Toole Design is the nation's leading planning, engineering, and landscape architecture firm specializing in bicycle pedestrian and micromobility transportation. As a firm, our mission is to create livable communities where walking and bicycling are safe, convenient, and enjoyable for everyone. We focus on developing cost-effective and implementable solutions that move people efficiently while also improving health, quality of life, and economic vitality.

Unique in the industry, we believe that the transportation system is the backbone of all infrastructure, and that the key to creating vibrant places lies in how well people can get around. Our keen understanding of context sensitivity, placemaking, and safety shines through in each of our projects. Starting from the earliest planning stages and working all the way through project completion, we consider all modes of transportation as well as environmental and health impacts to create functional, inviting public spaces for all.

Our Boston-based team will be led by **Jason Degray P.E., PTOE.**, who will serve as project manager and lead designer. Jason has extensive experience in transportation engineering and project management. He will bring his expertise in balancing user needs in a variety of on and off-road contexts to the Brookline Bridle Path Feasibility Study and Conceptual Engineering Design Plan. **Karen Fitzgerald, PLA** will lead our public engagement for the project, ensuring that our team has an inclusive public information and outreach strategy. Karen is an expert in communicating with the public in a variety of ways that helps people feel heard and valuable to the process. Our Mid-Atlantic Deputy Planning Director, **Jeff Ciabotti**, will perform Quality Assurance and Quality Control reviews throughout the project. He has worked on a variety of trails, paths, greenway and separated bicycle facility projects include those abutting active rail corridors.

We understand that transportation choices are important to the Town of Brookline and are pleased to see the Town taking steps to improve multi-modal infrastructure in the community. We're excited to have the opportunity to help identify the opportunities for Bridle Path routes and help move this project closer to implementation. If you have any questions, please do not hesitate to contact our project manager, Jason DeGray at 617.619.9910 x217

Sincerely,



Jennifer Toole, AICP, ASLA  
 President



## FIRM PROFILE

Founded in 2003, **Toole Design Group** is the nation's leading engineering, planning, and landscape architecture firm specializing in bicycle and pedestrian transportation and recreation. Toole Design has a national reputation in trail planning and design, transportation master planning, pedestrian and bicycle research and facility design, transit accessibility, Safe Routes to School planning and design, and a variety of other areas. Headquartered in the DC metropolitan area, Toole Design has 185 employees and 17 offices throughout the United States. Our team is available to begin working on this project immediately.

Toole Design has an outstanding reputation for results-oriented planning. Our plans identify specific locations for improvements, set priorities for implementation, and provide initial cost estimates. More importantly, our planning process builds momentum among client staff and elected officials, advocates, and the public to ensure projects and programs move forward immediately upon completion, and often even before the plan is completed. Our focus is multimodal transportation – developing cost-effective, practical solutions that move people efficiently while improving the health and quality of life of the community.

Toole Design has practical experience taking planning level trail concepts and turning them into reality. With design staff from varied backgrounds, we can take challenging and ambitious design goals and develop detailed documents that make construction go smoothly, minimize adverse impacts, and produce

cost effective results. We have accomplished this on a variety of projects including, trails/shared use paths, wayfinding sign systems, on-street bike facilities, intersection and pedestrian safety improvements, streetscapes, and parks.

As a recognized Bicycle Friendly Business by the League of America Bicyclists, we are proud of our reputation for being green: approximately 90% of our staff use transit, bicycle, and/or walk to work on a regular basis. Toole Design is a Woman-Owned Business.

### Urban Trail and Shared Use Path Planning and Design

Toole Design has significant experience in planning and design for shared use paths in urban environments. Our past work includes everything from urban trail feasibility studies to statewide trail master plans, design of rail with trail facilities from initial concept through detailed construction documents, and trail brochures and maps to federally funded trail research. Toole Design is the lead author of national design guidance documents such as the *AASHTO Guide for the Development of Bicycle Facilities*, which included an expanded trail design section. We are currently working on the 2019 update.

Toole Design offers a diverse, experienced team of professionals in the fields of civil engineering, landscape architecture, urban planning, public involvement, transportation policy, public health, and GIS mapping. Our firm uses a multidiscipline approach to achieve the goals of each trail project. Toole Design has performed trail planning and design services for numerous clients across the U.S.



Toole Design assisted in the concept and final design of the Westlake Cycle Track, which is part of an extensive urban trail network in Seattle, WA.

# PROJECT UNDERSTANDING



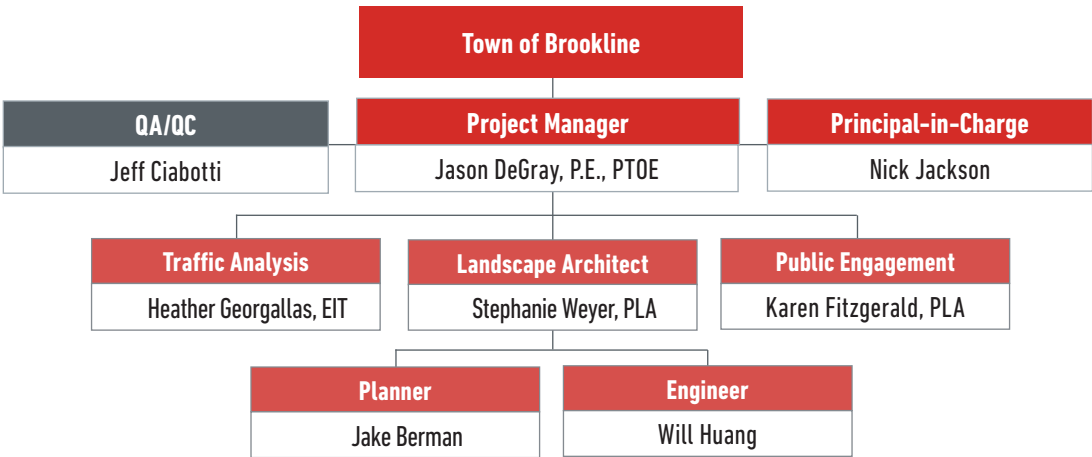
The historical Brookline Street boulevard has undergone several changes since the original Bridle path was design by Frederick Law Olmstead in the late 1800's. Pressures

from vehicle traffic and the addition of the MBTA Greenline have dramatically altered the tree-lined central greenway. The Town of Brookline and many stakeholders and community groups have envisioned the restoration of the approximately 2.3 mile 'Bridle Path' to accommodate a shred-use pathway designed for pedestrians and non-vehicular, multi-modal users. The project goal is to establish a feasible concept design for the pathway that is accessible, enjoyable and safe for all users. The Bridle Path Restoration project will include two major phases: Phase 1

Feasibility Study, and Phase 2 Concept Design. The Feasibility Study will take a close look at existing conditions and opportunities and constraints of possible pathway alignments, intersection crossings, existing traffic and parking as well as coordination issues with the Greenline service. Alignment options and alternatives will be explored. The Concept Design phase will further develop a preferred alignment and plan resulting from the feasibility study recommendations. The Concept design will include an estimate of probable costs. Public and stakeholder engagement will be conducted throughout the two phases. Our team will work with the Town and Community leaders to create an inclusive and wide-reaching public outreach plan, which may include community workshops, presentations, on-line feedback methods, and other information sharing techniques and opportunites.

# PROJECT TEAM

We have assembled a talented team of experts to support the Town of Brookline in executing the Brookline Bridle Path: Feasibility Study and Concept Design Services.







## JASON DEGRAY, P.E., PTOE

### NEW ENGLAND ENGINEERING DIRECTOR

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 17

Toole Design: 2016-Present

Greeman Pedersen, Inc.:  
2012-2016

BETA Group: 2010-2012  
and 2002-2007

Vanasse Hangen Brustlin:  
2007-2010

#### EDUCATION / CERTIFICATION

Master of Science, Transportation  
Engineering, University of  
Massachusetts: 2002

Bachelor of Science, Mechanical  
Engineering, Boston University:  
2000

Professional Engineer:  
CT, MA, ME, NH, NY, RI, VT

Professional Traffic  
Operations Engineer

#### APPOINTMENTS / AFFILIATIONS

Chair of International Advocacy  
Committee, Institute of  
Transportation Engineers

Jason develops sustainable transportation solutions for complex urban environments. As Toole Design's New England Regional Engineering Director, Jason has extensive experience overseeing efforts that span transportation planning, design, and engineering. Jason leads Toole Design's team in undertaking projects that deliver quantified public safety benefits, enhance mobility alternatives, and foster community inclusion. Jason is an advocate for Vision Zero and champions its principles in various forums, including in his role as Chair of the Institute of Transportation Engineer's Advocacy Committee and as a contributor to the Strong Towns organization.

#### SELECTED PROJECT EXPERIENCE

##### Providence City Walk, Providence, RI

Jason is Toole Design's Project Manager for the City of Providence's City Walk initiative. Jason is overseeing the overall project development, including project administration with the City of Providence and coordination with RIDOT. The project includes the design of approximately 2.5 miles of roadways intending to promote non-motorized mobility, celebrating the cultural diversity of south Providence and noted safety improvements for vulnerable roadway users along the corridor of highest safety concern in the State of Rhode Island. This project contains a robust public engagement process included focus groups, stakeholder interviews, a community advisory group and the completion of a significant tactical demonstration project piloting a two-way separated bicycle facility along Broad Street as well as multiple ground murals serving as curb extensions and completed by local artists.

##### First/Ashley and William Street, Ann Arbor, MI

Jason serves as engineering advisor for this project which aims to restore two-way travel operations on First Street and Ashley Street in downtown Ann Arbor to support improved safety, slower vehicle speeds and encourage development. In addition, the project considers the feasibility of providing separated bicycle facilities on First Street and William Street to provide safe and comfortable travel options for residents of Ann Arbor. Toole's role has been to conduct two design charrettes, discovery and design, to hear the needs of the neighborhoods, determine the feasibility of the design, review all the traffic data, and provide urban design for all the corridors and intersections within the study area. Jason provided senior level guidance for the development of design concepts, ensuring feasibility and also participation in the design charrette to provide engineering guidance. The restoration of two-way travel on First and Ashley Streets received City Council endorsement as a result of these efforts in August of 2018.

#### OTHER RELEVANT EXPERIENCE

##### MassDOT Complete Streets On-Call

**Boston On-Call Bike Facilities Design and Planning**, Boston, MA

**Union Square Utility and Roadway Improvements Project**, Somerville, MA

**Boston Vision Zero**, Boston, MA

**MassDOT Pedestrian and Bicycle Traffic Safety Program**



## KAREN FITZGERALD, PLA

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### SENIOR LANDSCAPE ARCHITECT

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 30

Toole Design: 2018-Present

FitzDesign: 2005-2018

Nobis Engineering: 2005-2018

The Waterfield Design Group:  
1999-2003

Pressley Associates, Inc.:  
1994-1999

Bechtel Corporation: 1989-1994

The Halvorson Company:  
1985-1987

#### EDUCATION / CERTIFICATION

Master of Arts, Landscape  
Architecture, SUNY ESF: 1988

Bachelor of Science,  
Environmental Design, University  
of Massachusetts: 1983

Professional Landscape  
Architect: MA, NH

#### APPOINTMENTS / AFFILIATIONS

American Society of  
Landscape Architects

Karen is a Senior Landscape Architect with 30 years of experience in landscape architecture design and community planning. Karen has managed and implemented a wide variety of projects including complex urban streetscapes, urban open space, innovative planning regulations, and community master planning. Karen's background and skills in urban design and community planning bring a comprehensive understanding to her projects, from development policy to construction. Karen is passionate about community outreach and involvement, and the importance of maintaining a sense of place and community identity. She maintains a professional commitment to ecological design and continually looks to implement green infrastructure and sustainable site design practices.

#### SELECTED PROJECT EXPERIENCE

##### **Bedford Pedestrian and Bicycle Master Plan, Bedford, NH**

Karen worked with the Town of Bedford to create a master plan focusing on pedestrian and bicycle access throughout the town. The project identified opportunities for new and improved bike ways, trails and pedestrian routes, as well as planning and action items for implementation. Karen managed the project including organizing community outreach, creating graphics and co-writing the master plan document.

##### **Bruce Freeman Rail Trail, Concord/Acton, MA**

Karen served as senior landscape architect consultant on Phase 2 of the Bruce Freeman Rail Trail, a MassDOT project, within the towns of Acton and Concord. When completed, this multi-purpose trail will provide approximately 25 miles of non-motorized transportation connection from Lowell to Framingham along an abandoned rail line. Karen provided planting design, wetland restoration, and coordinated construction documentation.

##### **Dover Urban Design Guidelines, Dover, NH**

Karen served as urban design planner, providing design guidelines for the City's downtown and Gateway districts. The design guidelines were created to assist developers as well as City agencies in development design and approvals process. Karen examined the character and needs of each neighborhood to create place-based guidelines for redevelopment and new construction projects. Karen created visual preference surveys at the start of the project as part of the public outreach efforts.

#### OTHER RELEVANT EXPERIENCE

##### **Mill City Park Master Plan, Franklin, NH**

##### **Concord NH Elementary Schools, Concord, NH**



## JEFF CIABOTTI

### MID-ATLANTIC DEPUTY PLANNING DIRECTOR | TRAILS PRACTICE LEAD

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 24

Toole Design: 2012-Present

Save the Children - U.S. Programs: 2011-2012

Rails-to-Trails Conservancy: 1995-2011

#### EDUCATION / CERTIFICATION

Bachelor of Arts, Psychology, Rollins College: 1987

#### APPOINTMENTS / AFFILIATIONS

Jeffrey L. Doppelt Charitable Foundation

Transportation Research Board Pedestrian Committee

Transportation for America, Equity Caucus

Jeff is Toole Design's Trail and Greenway Practice Lead and Mid-Atlantic Deputy Director of Planning. Jeff has spent more than 20 years in planning, education, and advocacy, focusing on creating healthy, sustainable communities through developing networks of trails, greenways, and connected corridors. Jeff has led numerous trail and greenway projects for a variety of cities, regional agencies, and state-level clients around the United States. He was formerly the Vice President for Trail Development at Rails-to-Trails Conservancy, and he is a nationally recognized expert on trail and greenway development who has presented numerous workshops, trainings, and keynote addresses. Jeff understands all aspects of a project's evolution, including policy development, master planning, design, prioritization, funding, and management. This makes Jeff's projects successful, whether he is working on large scale regional trail system plans or detailed construction design.

#### SELECTED PROJECT EXPERIENCE

##### **Mantua Greenway, Philadelphia, PA**

Jeff led Toole Design's efforts to prepare the management plan for this urban greenway. The work includes identifying the potential roles of public and private entities and organizations and identifying opportunities for cooperation between these stakeholders. The plan places stresses public safety through community engagement, surveillance, and maintenance, emphasizing Crime Prevention Through Community Design (CPTED). Jeff and the Toole Design Team also provided input and feedback on project materials, including pavements, landscaping, and hardscape features.

##### **Patapsco Regional Greenway Concept Plan, Baltimore, MD**

Jeff's work on this landmark regional greenway plan included strategic advising on trail alignment and development strategies. He also provided in-depth review of major client submissions, ensuring an accountable quality control process that produced a well-received final plan.

##### **Trails Master Plan for Prince George's County, Prince George's County, MD**

Jeff was Project Manager developing a trails master plan for Prince George's County, MD. The plan provides an ambitious road map for completing 500 miles of trails by 2040. Toole Design's work will help the county fulfill its vision to serve all types of trail users and interests, and create a network of trails connected within the county and regionally.

#### OTHER RELEVANT EXPERIENCE

**Mid-Ohio Regional Planning Commission - Economic Impact of Trails Study,** Columbus, OH

**Adirondack Park Economic Development Strategy and Priority Project Implementation Program,** Adirondack Park, NY

**Horizon Foundation: Healthy Lifestyles - Complete Streets Policy Initiative,** Howard County, MD

**Eastside Rail Corridor Trail Project Master Planning Project,** King County, WA



## HEATHER GEORGALLAS

### PROJECT ENGINEER

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 9

Toole Design: 2016-Present

Greenman-Pedersen, Inc.:  
2014-2016

Fort Hill Infrastructure, LLC:  
2012-2014

Vanasse Hangen Brustlin, Inc.:  
2007-2008

#### EDUCATION / CERTIFICATION

Bachelor of Science, Civil  
Engineering, Northeastern  
University: 2010

Heather is a project engineer with broad experience involving a diverse selection of land use, urban design, site development, and civil and transportation projects for both public and private sector clients. Heather has a thorough understanding of traffic analysis and works with various design and analysis programs on a variety of transportation projects. Her experience includes analyzing vehicular transportation impacts, pedestrian and vehicular safety impacts, and multimodal transit utilization in both urban and suburban areas. She has developed transportation planning documents to support mixed-use development projects, as well as performed key engineering work and written numerous traffic engineering reports, including traffic impact and access studies, functional design reports, traffic calming and pedestrian studies, traffic calming needs assessments, and signal analyses.

#### SELECTED PROJECT EXPERIENCE

##### **Union Square Utility and Roadway Improvements, Somerville, MA**

Heather is serving as a traffic engineer in support of the utility and roadway improvement redesign project of approximately 15 intersections. The project entails a complete reconstruction of three miles of corridor through grant funding, requiring an assessment of the multimodal transportation impacts of an Early Action Implementation plan, as well as multimodal recommendations for improvements to the roadways. Heather performed fieldwork, analyzed traffic volumes under various conditions, performed capacity analysis under various conditions, and report writing.

##### **Cambridge Bicycle Facilities, Cambridge, MA**

Heather is serving as project engineer for TDG's efforts assisting the City of Cambridge with their efforts to create a complete bicycle accommodations network throughout the City. The project involved retrofitting four corridors with high quality bicycle facilities including one-way separated bike lanes, two-way separated bicycle lanes, and bicycle lanes. Heather is responsible for managing the parking data collection efforts, conducting field visits, and analyzing the parking conditions along the study corridors within the City of Cambridge.

##### **City of Boston Vision Zero Planning and Design, Boston, MA**

Heather is serving as an engineer for Boston's Vision Zero Planning and On-Call Design project. TDG is responsible for developing rapid response engineering design plans that aim to reduce traffic crashes and crash severity. Heather has assisted in the collection of existing data, provided safety and capacity analyses, and assisted in the development of design plans.

#### OTHER RELEVANT EXPERIENCE

##### **Boston On-Call Bike Facilities Design and Planning, Boston, MA**

##### **Traffic Calming Study and Concept, Winchester, MA**

##### **Downtown Revitalization Project, Ashland, MA**



## STEPHANIE WEYER, PLA

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### LANDSCAPE DESIGNER

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 7

Toole Design: 2018-Present

Kyle Zick Landscape Architecture: 2013-2018

Ecocity Builders: 2017

Olmsted Center for Landscape Preservation, National Park Service: 2012

#### EDUCATION / CERTIFICATION

Bachelor of Landscape Architecture, Ball State University: 2011

Professional Landscape Architect: MA

#### APPOINTMENTS / AFFILIATIONS

American Society of Landscape Architects, Boston Chapter

#### AWARDS

Boston Society of Landscape Architects Honor Award for Emerald Necklace Tree Management Plan: 2014

BSLA Community Service Award for conference organization work: 2013

American Planning Association NY Metro Chapter Achievement Award for Orange County Design Manual: 2011

Stephanie has served as a Landscape Designer and project manager on projects ranging from parks, plazas, and playgrounds to forts and burying grounds. She is skilled in all aspects of design, from initial site analysis and conceptualization through community collaboration to cost estimation and construction observation. Comfortable in planning roles, Stephanie served as a primary contributor to the Gettysburg National Military Park Comprehensive Trails Plan and the Emerald Necklace Tree Management Plan, an award-winning document for nationally significant parks designed by Frederick Law Olmsted. Stephanie's designs hone in on site identity, functionality, and user comfort in balance with environmental resource management and resilience. : She recently received her Massachusetts Professional Landscape Architect license, pending the completion of the Commonwealth's administrative processes.

#### SELECTED PROJECT EXPERIENCE

##### **Ames Complete Streets Plan, Ames, IA**

Stephanie provides graphic support on the Ames Complete Streets Plan, which seeks to improve the usefulness, comfort, and safety of the transportation system for people who walk, bike, take transit, or drive. Stephanie has created three-dimensional diagrammatic renderings to illustrate complete streets concepts for different street types.

##### **Newton On-Call Traffic and Transportation Engineering Services, Newton, MA**

Stephanie supports Newton on-call services with graphic support. She has created three-dimensional Complete Streets graphics to illustrate phased site solutions for streets in Newton.

##### **Boston Vision Zero Planning and On-Call Design, Boston, MA**

Stephanie works as a graphic designer for the Planning & On-Call Design effort to implement the Vision Zero plan. She has created charts and infographics to illustrate data concepts for particular issues and locations.

##### **Improved Bicycle Facilities on the Arborway, Boston, MA**

Stephanie helps illustrate design solutions for bicycle facilities on the Arborway. She has created plan graphics to exhibit how changing the Arborway circles would affect pedestrian, bicycle and motor vehicular infrastructure.

##### **Sandwich Bikeways and Pedestrian Master Plan, Sandwich, MA**

Stephanie works as a planner on the Sandwich Bikeways and Pedestrian Master Plan, which seeks to establish the feasibility of developing various types of cycling infrastructure within the Town of Sandwich. Stephanie is analyzing roadways and developing map graphics to illustrate potential design solutions.

#### OTHER RELEVANT EXPERIENCE

##### **West Vernor Streetscape, Detroit, MI**

**Gettysburg National Military Park Comprehensive Trails Plan, Gettysburg, PA**  
**Emerald Necklace Tree Management Plan & Planting, Boston, MA**





## WILLIAM HUANG

### ENGINEER

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 4

Toole Design Group:  
2016-Present

VHB, Boston: 2015

Montana State University,  
Research Experience for  
Undergraduates, Bozeman: 2014

#### EDUCATION / CERTIFICATION

Bachelor of Science, Civil  
Engineering, Northeastern  
University: 2018

Master of Science, Civil  
Engineering, Northeastern  
University: 2018

Engineer in Training: RI

#### RECENT PUBLICATIONS

University Trip Exchange  
District Study, Montana State  
University: 2014

William is an engineer with experience in roadway design and construction, signal timing design, traffic flow analysis, and transportation impact fee scheduling. Drawing on his knowledge from summer programs studying in the Netherlands and performing research for the City of Bozeman, he specializes in repurposing urban roadway spaces to be multimodal, safe, and livable. The majority of William's work falls under rapid implementation and rapid response projects as part of Vision Zero Boston and roadway retrofit projects for Boston Bikes. He also tackles traffic issues and ensures traffic flow while proposing multimodal facilities to create a comprehensive design for communities. William is known for his attention to detail and ability to communicate designs clearly through concept visuals and drafted plans.

#### SELECTED PROJECT EXPERIENCE

##### **Boston On-Call Bike Facilities Design and Planning, Boston, MA**

As an engineer, William has worked on all different phases of the Boston On-Call project including conducting fieldwork, documenting existing conditions, designing facilities, responding to client comments, delivering submissions, and checking installations. The project sought to repurpose Boston's existing roadways to be multimodal and safe. To this purpose, William has designed for a variety of facilities that includes traditional bicycle lanes, parking protected cycle tracks, and flexpost separated cycle tracks. William also worked to maintain Boston's existing roadways through field checks and punchlist submissions for reinstallation.

##### **Cambridge Bicycle Facility Demonstration Projects, Cambridge, MA**

William performed traffic and design work for various corridors in the City of Cambridge. He conducted a traffic parking study for the Cambridge Street project to propose a parking protected bicycle facility. He performed parking occupancy observations at different periods of the day to justify the removal of parking on the main corridor. After the analysis, he drafted plans for the parking-protected bicycle facility. For Massachusetts Avenue, he inventoried signs and proposed bicycle lanes for the mile-long corridor. On Brattle Street, he proposed another parking-protected bicycle facility.

##### **First/Ashley and William Street Corridor Redesign, Ann Arbor, MI**

William assisted with setting up and analyzing the traffic network in Synchro. This project includes the restoration of two one-way roads to two-way roads in downtown Ann Arbor. He also updated level of service tables to understand traffic impacts to the network based on the different alternatives.

#### OTHER RELEVANT EXPERIENCE

**McNichols Bikeway Design, Detroit, MA**

**Vision Zero Boston, Boston, MA**

**Boston Complete Streets, Boston, MA**

**Franklin Park Pathways, Boston, MA**

**Somerville by Design, Somerville, MA**



## JAKE BERMAN

### PLANNER

#### PROFESSIONAL HIGHLIGHTS

Years of Experience: 2

Toole Design: 2018-Present

University of Pennsylvania  
School of Design: 2017-2018

Nelson/Nygaard Associates:  
2015-2016

Massachusetts Department of  
Transportation: 2014

#### EDUCATION / CERTIFICATION

Master of Planning, University  
of Pennsylvania School of  
Design: 2018

Bachelor of Science, Political  
Science, Northeastern  
University: 2014

Jake is a planner in Toole Design's Boston office. Jake draws on his spatial analysis, policy, and engagement skills to make urban spaces more equitable, sustainable, and livable for all people. At Toole Design, he has worked on Vision Zero, Complete Streets, Safe Routes to Schools, and bicycle and pedestrian plans at the local, regional, and state levels. Before joining us in Boston, he completed a Master of City Planning at the University of Pennsylvania's School of Design, where his studio project reimaged how urban streets can work with emerging technologies like autonomous shared vehicles and personal electric mobility devices.

#### SELECTED PROJECT EXPERIENCE

##### City of Providence City Walk, Providence, RI

Jake assisted with the City Walk Demonstration Project to show Providence residents how space on Broad Street can be reallocated to better serve the community using temporary pavement markings and painted plazas. Jake created informational signs, helped set up the temporary markings, and talked with residents to learn how the changes affected their experiences.

##### MassDOT Complete Streets On-call Services

Jake is serving as a planner to assist the Massachusetts Department of Transportation (MassDOT) in identifying projects to improve pedestrian safety. Jake is using GIS analysis to find locations on MassDOT-owned roadways state-wide where projects will have the greatest impact on pedestrian safety, including locations with a high density of collisions and where access to transit can be improved.

##### Massachusetts Pedestrian Transportation Plan

Jake served as a planner on the Massachusetts Pedestrian Transportation Plan. The plan outlines an actionable investment strategy to guide its decision-making and future capital investments in pedestrian infrastructure. Jake created graphics for the plan's online format to clearly convey the information to a diverse audience.

##### Salem Bicycle Master Plan, Salem, MA

Jake served as a planner on Salem, MA's Bicycle Master Plan. The plan recommends 87 infrastructure projects and nine policies and programs to make bicycling safe and possible for most trips in the small, dense city. Jake created a project prioritization methodology to assist the city in determining the best way to implement the 87 infrastructure projects. He also created maps and graphics that clearly convey the information to a diverse audience.

#### OTHER RELEVANT EXPERIENCE

##### Massachusetts Bicycle Transportation Plan

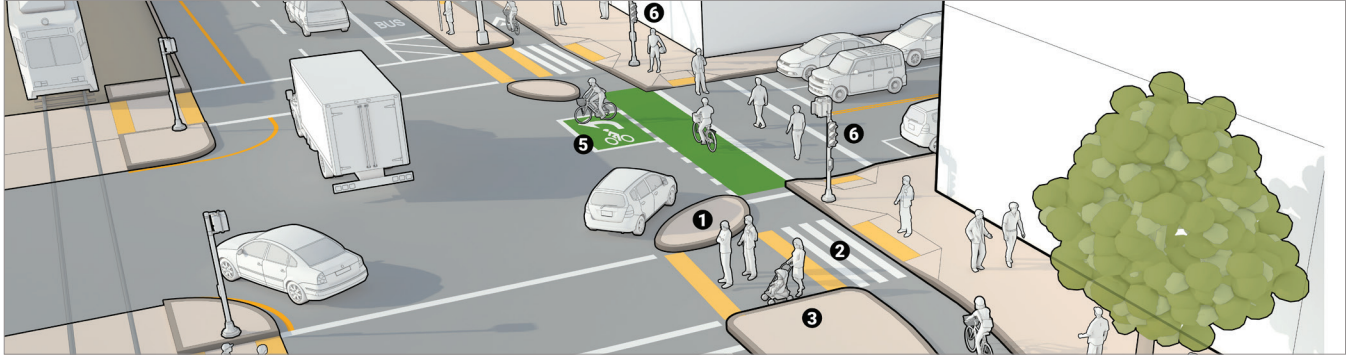
##### CRCOG Complete Streets, Hartford Region, CT

##### City of Jersey City Vision Zero Action Plan, Jersey City, NJ

##### Cambridge Bus Service Planning, Cambridge, MA

## BOSTON ON-CALL BICYCLE FACILITIES PLANNING AND DESIGN

BOSTON, MA



Over the last six years, Toole Design has worked closely with the City of Boston to increase bicycling and improve safety for all users on Boston's streets. Through on-call contracts, Toole Design has designed over 80 miles of innovative bicycle facilities and treatments, from priority shared lanes to separated bike lanes. Toole Design has assisted Boston Bikes in a variety of tasks, including the development of the Boston Bike Network Plan, bicycle facility construction documents, third-party design review, presenting at public meetings, bikeshare and bicycle parking demand and site analysis, and supporting the Boston Bikes programs and events. Toole Design has developed several conceptual design plans and construction plans for bicycle facilities located throughout the City of Boston where the design process has addressed a number of key issues, including intersection design that improves the safety of all users, motor vehicle level of service analysis, intersection improvements, on-street parking analysis, adjustments to bus stops, and other innovations to support clear directional messages to all users. The City of Boston has several high volume bicycle commuter routes that cross streetcar tracks. Toole Design worked with the City to provide bicycle lanes with green pavement to assist bicyclists in safely crossing these tracks. Bikeway plan developments involved extensive fieldwork to verify existing conditions and observe behaviors and operations. Through developing these bikeway plans, Toole Design has coordinated with the City's Transportation Department, Public Works Department, and Parks Department as well as the Massachusetts Department of Transportation and the Massachusetts Department of Conservation and Recreation. Toole Design has responded to multiple fast-tracked projects to implement safety improvements at key locations. Toole Design worked with the Public Works Department (PWD), Boston Transportation Department (BTD) and Boston Bikes to redesign Sullivan Square with buffered bicycle lanes, multimodal signage, improved lane alignments and transitions as a part of a fast-tracked resurfacing project. In June of 2012, Toole Design met BTD Transportation Commissioner and key staff in the field to evaluate immediate safety improvements for pedestrians and bicyclists due to a fatality at Huntington Avenue and Forsyth Way. Toole Design developed completed a safety review, developed recommendations, and completed construction documents for implementation in 10 days.

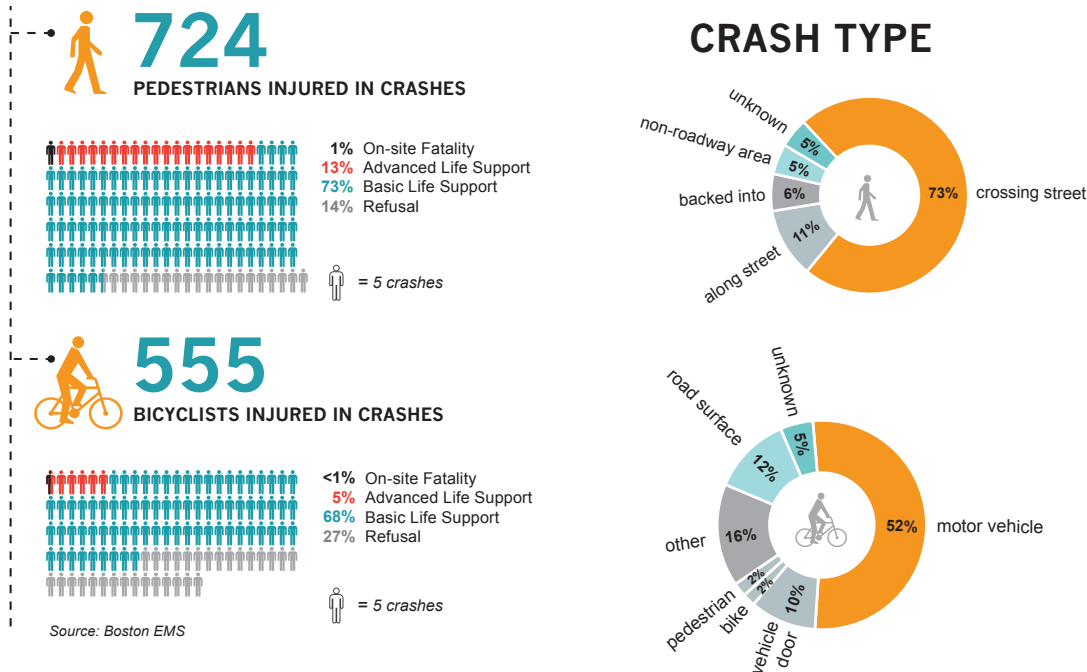
### CLIENT

Boston Transportation  
Department  
Nicole Freedman (Former  
Director of Boston Bikes)  
City of Newton, Director of  
Transportation  
110 Crafts Street  
Newton, MA 02460  
617.879.8148  
nfreedman@newtonma.gov



# CITY OF BOSTON'S VISION ZERO PLANNING AND ON-CALL DESIGN

BOSTON, MA



After launching its Vision Zero initiative aimed at eliminating fatal and serious traffic crashes by 2030, the City of Boston hired Toole Design as the lead consultant for the project. This work includes four critical action areas: 1) reducing speeds and building safer streets, 2) tackling distracted and impaired driving, 3) engaging Bostonians with Vision Zero, and 4) using data and analysis to measure results. At its core, Vision Zero Boston is both a reactive and proactive approach to creating a safer transportation system. Toole Design is an integral partner in all aspects of planning and design for this effort.

Responding to every fatal traffic crash is a vital component of this Vision Zero effort. Toole Design is part of the multidisciplinary, multi-agency Rapid Response Team that will study each crash and recommend appropriate street design changes to reduce the likelihood of future crashes and to reduce their severity. To date, Toole Design has prepared ten rapid response implementation plans that incorporate safety countermeasures such as separate bicycle facilities, crosswalks, pedestrian crossing islands, and Rectangular Rapid Flashing Beacons.

In addition, the Toole Design Team worked with the City to analyze crash data and redesign two high-crash corridors: Codman Square and the Massachusetts Avenue corridor between Melnea Cass Boulevard and Beacon Street. For these two corridors, the Toole Design Team conducted public outreach, safety analysis, and traffic analysis, and developed construction documents. For both projects, recommendations focused on low-cost, short-term safety countermeasures. Both projects are now under construction.

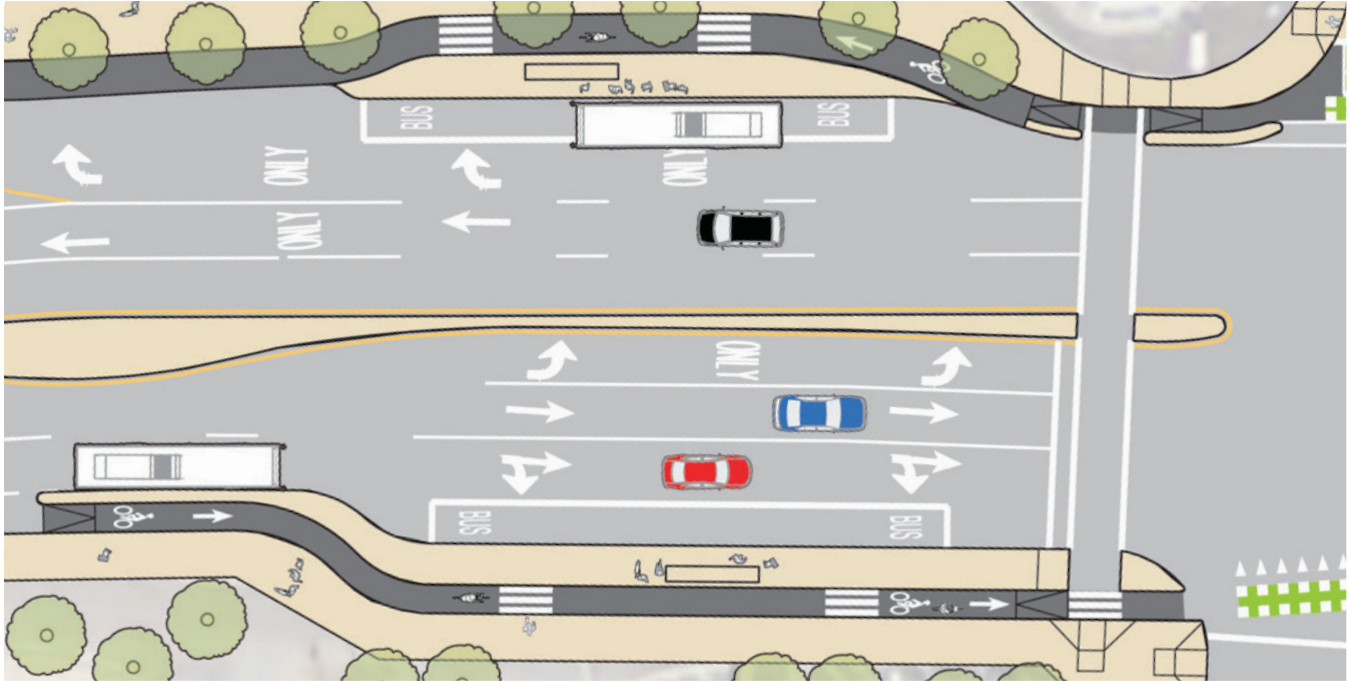
Toole Design also led the development of a strategic Action Plan to achieve the goals of Vision Zero. This document provides the basis for implementation efforts and sets an important baseline for the City's efforts in the future.

## CLIENT

Boston Transportation  
Department  
Charlotte Fleetwood, Senior  
Transportation Planner  
City Hall Square, Room 721  
Boston, MA 02201  
617.635.2462  
charlotte.fleetwood@boston.gov

## BROOKLINE GATEWAY EAST BICYCLE FACILITIES

BOSTON, MA



The Town of Brookline is redesigning Route 9 as the eastern gateway to Brookline from Boston. This urban segment of Route 9 is a four to six lane corridor with high volumes of traffic, pedestrians, and transit vehicles. For bicyclists, this segment is a critical link between the off-street paths in Boston's Emerald Necklace on the east side of the village and bike lanes on Washington Street on the west side of the village.

During public review of the 25% design plans, bicycling advocates and residents expressed concern about the lack of separated bicycle facilities through Brookline Village. In response, the Massachusetts Department of Transportation (MassDOT) asked Toole Design Group (Toole Design) to work with the Town to develop a realistic solution that would address public input while meeting the goals of the Route 9 Gateway East project and local and regional plans.

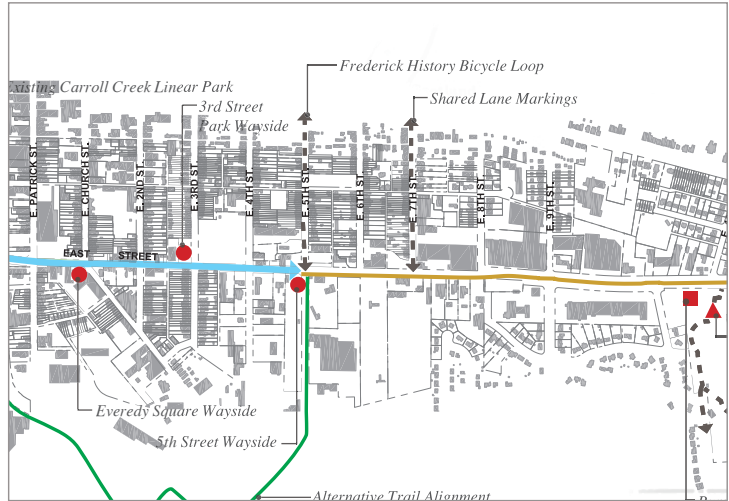
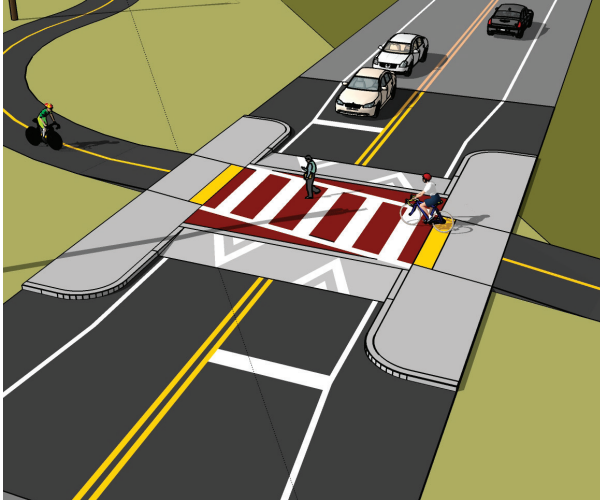
Toole Design worked closely with Town staff, MassDOT engineers, and the design consultant to develop three alternatives for separated bike lanes connecting the Emerald Necklace with Washington Street. The designs include innovative solutions to provide the separated facilities while matching existing levels of service for vehicles and providing enhanced pedestrian accommodations both along and across Route 9. The selected alternative includes a raised separated bike lane, protected intersection treatments at three signalized intersections, and floating bus stops to minimize conflicts between buses, transit riders, and bicyclists. The project is now moving forward towards the 75% design phase with increased public support.

### CLIENT

Massachusetts Department of  
Transportation  
Courtney Dwyer, Project  
Designer/Review Engineer  
185 Kneeland Street, 9th Floor  
Boston, MA 02111  
857.368.6165  
[courtney.dwyer@dot.state.ma.us](mailto:courtney.dwyer@dot.state.ma.us)

## FREDERICK EAST STREET RAIL-WITH-TRAIL

### FREDERICK, MD



The East Street Rail-with-Trail is a key link in a planned 35-mile system of shared use paths that provide safe, non-motorized access to recreational, cultural, employment, and commercial areas throughout the City of Frederick. This 3-mile trail project connecting the MARC train station in historic downtown Frederick to neighborhoods outside of the city center was a highly technical effort. The constrained roadways required innovative solutions that combined sidewalk treatments, shared lane markings, and alternative routes in an extremely confined space with historic designation. The route alignment within the unused railroad corridor and adjacent to an active tourist train added design and policy complexity.

The outcome of this project was 30% design plans and a technical engineering feasibility analysis for much of the corridor, from the MARC station north to MD Route 26 and Wormans Mill Road. Effective public and stakeholder outreach, coordination with the tourist train operator, and a strong working partnership with City staff were all integral to the project's success.

Funding for this project was provided by a pilot grant from the Transportation / Land-Use Connections (TLC) Technical Assistance Program of the National Capital Regional Transportation Planning Board.

#### CLIENT

City of Frederick  
Tim Davis, Transportation Planner  
Municipal Office Building  
140 West Patrick Street  
Frederick, MD 21701  
301.600.1884  
tdavis@cityoffrederick.com



## SALISBURY RAILS WITH TRAILS PLANNING AND DESIGN SERVICES

SALISBURY, MD



The City of Salisbury plans to build a trail running south-north through the center of town, following the general alignment of the Norfolk Southern railroad tracks. The trail will be a centerpiece of the City's active transportation network, connecting residents, employees, students, and visitors with key destinations.

The planned trail is 5.75 miles long, running between the City of Fruitland (southern end) and West Naylor Mill Road (northern end). Key to the trail's success is its alignment through downtown Salisbury and its connections to the newly completed Riverwalk, a major focus of the City's trail system. The trail is an important part of the City of Salisbury's transformation.

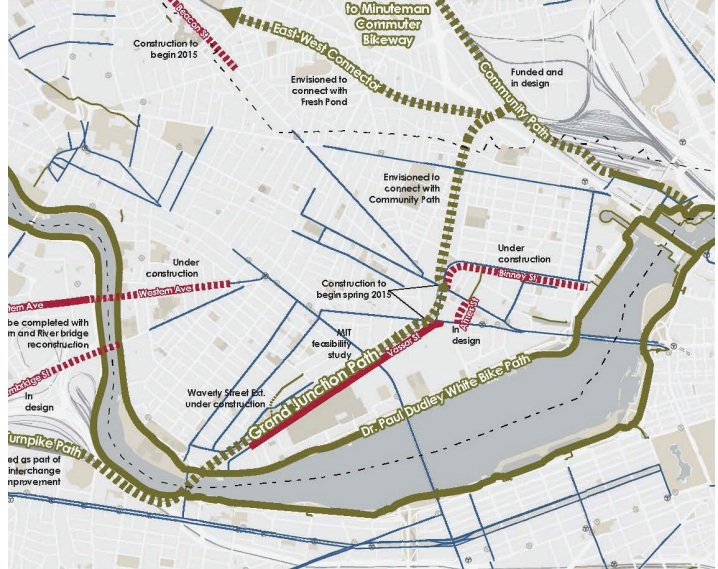
Toole Design prepared a Master Plan document that provides the City with options for a primary and alternative south/north trail alignment, including an implementation strategy by segment, and 35% design plans for the trail's preferred primary alignment. This plan will guide the City's work going forward, allowing for any ROW acquisition, easement agreements, and funding needed to implement the trail. The Master Plan document also includes design guidelines and planning-level cost estimates, along with information on funding resources and an implementation sequence.

### CLIENT

City of Salisbury, Department of  
Infrastructure and Development  
Anne Roane  
125 North Division Street  
Room 202  
Salisbury, MD 21801  
410.548.3170  
aroane@salisbury.md

## GRAND JUNCTION PATH AND MIT FEASIBILITY STUDY

### CAMBRIDGE, MA



Toole Design worked with Kleinfelder and McMahon Associates on determining the feasibility of incorporating the Grand Junction path through the Massachusetts Institute of Technology (MIT) campus. The feasibility study aimed to identify and understand the potential impacts of adding the multiuse path along the existing MIT rail corridor. The path is anticipated to provide a key link to the regional bicycle network. As a result, the study area was extended to include nearby existing paths such as the Charles River Bikeway. The team worked with MIT and stakeholders to evaluate specific campus issues including delivery and service to buildings along the corridor, utility maintenance and construction, building maintenance and construction, and future development potential.

At project kick-off, Toole Design conducted an analysis of rails-with-trails, which are trails located adjacent to active rail lines. The analysis included design considerations, challenges, and resources that the team referred to throughout the length of the project. Toole Design worked with the team on developing the proposed cross sections of the corridor and provided network connectivity improvements and concepts. In addition, Toole Design was responsible for conducting an existing conditions analysis of the adjacent Vassar Street cycle track. The cycle track runs parallel to the proposed Grand Junction path and was evaluated as part of this study. Toole Design recommended improvements to the cycle track to increase safety and operations.

#### CLIENT

Massachusetts Institute of Technology  
Kelley Brown, AICP, LEED AP,  
Senior Campus Planner  
77 Massachusetts Avenue,  
Building NE49-3131  
Cambridge, MA 02139  
617.452.2410  
kbrown@plant.mit.edu



# PROPOSED SCOPE OF WORK

## Task 1.1 Kick off Meeting

The Brookline Bridle Path Feasibility Study and Concept Design project will commence with a kickoff meeting between the Toole Design Team, the Town of Brookline, and other stakeholders as identified by the Town. During this meeting the project team will review and discuss the following to clearly define the project goals and the most efficient and comprehensive means of moving the project forward:

- The project scope, schedule, field reconnaissance, and potential meetings dates.
- Institutional considerations to ensure the project can be implemented within existing policies and resources.
- A list of plans to be reviewed, and the availability of GIS data resources.
- The Toole Design Team's understanding of the preferred means of communication and data transfer protocols.

The Toole Design Team will continually coordinate and provide project updates to Town staff throughout the life of the project. In addition to the kickoff meeting, it is expected that the Toole Design Team will meet with the Brookline Town Select Board, Transportation Board and the Bicycle Advisory Committee, and other boards as appropriate, these meetings are detailed in the subsequent tasks.

### Task 1 Deliverables:

- Kick-off meeting Notes
- Project Schedule
- Public Engagement and Outreach Plan
- Monthly progress reports
- Bi-Weekly Check-in

## Task 2 Community Outreach and Engagement

We understand the importance of building strong community relationships through the exchange of information and we will work with the Town and community leaders to create a responsive and inclusive engagement process. The Outreach and Engagement Plan will be tailored to the specific needs of the neighborhoods, minimizing vulnerabilities during the outreach process and providing community members opportunities to fully participate and influence decision

making. Our team has successfully used several participation methods on similar projects including: in-person meetings, on-line interaction, pop-up events at community gatherings and strategic locations, tactical activities and distributed information.

### Task 2.1: Community Workshops – Feasibility Study

The Toole Design Team will prepare for and attend two (2) community outreach events during the Feasibility Study phase, hosted by the Town of Brookline. The first workshop will be held early on in the process to present the existing conditions and to exchange information and gather user input on possible bikeway route alternatives. The second workshop will be scheduled for later in the feasibility study phase and will focus on presenting the draft feasibility study findings and gathering feedback on a preferred plan.

### Task 2.2: Community Outreach – Concept Design

Our team will work with the Town and neighborhood leaders to organize 3 public outreach events during the Concept Design of the project. These events will be planned and scheduled at critical phases of the concept development in order to give all residents opportunities to participate in the corridor planning and concept design process. Our team will work with the Town as part of Task 1 to develop an inclusive outreach strategy and feedback methodology.

### Task 2 Deliverables:

- Five (5) community workshops and/or events with presentation materials
- Summary of community feedback received.

## Task 3 Feasibility Study

Our team will evaluate alternatives for the proposed pathway. The feasibility study will be based on existing conditions, feedback from public outreach, traffic study research and additional reports and studies.

### Task 3.1: Review Existing Plans and Studies, Site Visit, and Existing Conditions Memorandum

The Toole Design Team will review available GIS data provided by the Town, conduct a thorough review of existing plans and studies, gather data, and conduct a site visit to ensure that the Brookline Bridle Path

## 3.B.

recommendations are consistent with Town practices and are feasible to implement.

The Toole Design Team will review available data to ensure that it is accurate and that it reflects a comprehensive geographic dataset. This review will also be used in preparation for field reconnaissance.

Using the provided GIS data, the Toole Design Team will perform detailed field reconnaissance of the 2.25-mile Beacon Street corridor. The field survey will focus on ground-truthing key existing dimensions; reviewing existing conditions; understanding and verifying opportunities and constraints; conceptualizing draft alignments; and collecting photo documentation. We will review the corridor to:

- Verify accuracy of the dataset
- Document existing conditions with field measurements and photographs
- Review potential right-of-way impacts
- Note areas which may present engineering challenges
- Identify community links and access to commercial, and/or major institutions along the corridor
- Observe and note existing traffic operations
- Data Collection

This phase of work will consist of collection of existing traffic, pedestrian, bicycle and micromobility volumes, during a typical weekday. Manual intersection Turning Movement Counts (TMCs) will be conducted at twenty locations (20) locations during the morning (7AM to 9AM) and evening (3 PM to 7 PM). TMCs will include vehicle classification (buses, passenger cars) as well as pedestrian and bicycle counts. The locations include Beacon Street at:

- Ayr Street
- Strathmore Road
- Englewood Avenue
- Corey Road/Dean Road
- Williston Road U-Turn
- Winthrop Road
- Washington Street
- Westbourne Terrace
- Summit Path crossing
- Marion Street
- Winchester Street
- Centre Street
- Harvard Street

- Pleasant Street
- Charles Street
- St Paul Street
- Kent Street/Powell Street
- Hawes Street
- Carlton Street

Following the site visit and review of existing plans, studies, and technical guidelines, the Toole Design Team will prepare an existing conditions memorandum. This memorandum will be shared with the Town and will be included as a section in the ultimate feasibility study.

### Task 3.1 Deliverables

- Existing conditions memorandum
- Base map

### Task 3.2: Delineate Alternative Bikeway Facilities and Connections

Using the information collected in Task 2.1, the Toole Design Team will prepare a preliminary large format alignment map for the 2.25-mile Beacon Street Bridle Path corridor. The Toole Design Team will identify primary route alignments based on railway offset and safety requirements, street crossings, adjacent parking, and safety standards for pedestrians and bicyclists. The alignments will be later refined in Tasks 3.5 and 3.6 based on stakeholder and community engagement, environmental constraints, construction feasibility, and costs. Each alignment will meet national best practices for bikeway facility design and user comfort.

### Task 3.2 Deliverables:

- Preliminary bikeway facility alignment maps with precedent images
- Preliminary typical cross sections
- Preliminary construction cost estimates
- A comparison of the proposed alignments

### Task 3.3: Coordinate with MBTA

The Toole Design Team has worked on multiple projects with Massachusetts Bay Transportation Authority (MBTA) and understands the complexities involved in designing a rails-with-trails project. The Toole Design Team will analyze all existing traffic studies, and coordinate with MBTA regarding the pathway and proposed changes.

**Task 3.3 Deliverables:**

- Documented coordination efforts with MBTA
- Traffic study memorandum

**Task 3.4: Meetings with the Town Committees and Boards**

The Toole Design Team will meet with the Transportation Board, Bicycle Advisory Committee and, Public Transportation Advisory Board (PTAC) to discuss the preliminary bikeway facility alignments. Toole Design will discuss the pros and cons of each alignment based on national best practices, comfort, safety, and cost.

**Task 3.4 Deliverables:**

- Documented meeting minutes
- Refined preliminary on-road and off-road bikeway facility alignment maps based on the Town and agency feedback

**Task 3.5: Draft Feasibility Study**

The Toole Design Team will develop a feasibility report for the Beacon Street Bridle Path that will clearly detail existing conditions and technical challenges, including intersection crossings, right-of-way impacts, side street links, priority destinations, operational impacts and maintenance. The study will document the project goals and evaluate the pros and cons of the proposed bikeway facilities based on national best practices and stakeholder and community input. The feasibility study will include planning-level construction cost estimates. The Toole Design Team will develop an implementation plan that clearly lays out the responsibilities and actions needed to move the project toward engineering design and project construction. Feasibility chapter outline to include:

1. Project Vision & Goals
2. Existing Conditions
3. Public Outreach and Feedback
4. Constraints and Opportunities
5. Alignment Alternatives
6. Cost Comparisons
7. Preferred Plan

Safety & modal analyses will be undertaken for pedestrian, bicycle/micromobility and vehicular users under both existing conditions and alignment alternatives. These analyses will consist of a comprehensive safety assessment of the Beacon Street corridor as well as a Pedestrian Experience Index

(PEI) analysis, Level of Traffic Stress (LTS) analysis for bicyclists and micromobility users as well as Level of Service (LOS) for vehicular operations. The feasibility study will consider traffic control needs to safely cross the Bridle path at intersecting side streets/transition areas. Note that this proposal presumes the Town of Brookline Police Department would make crash records available for the most three-year period where records are available. In lieu of this availability Toole Design will utilize MassDOT crash records. It is noted that both Washington Square and Coolidge Corner are currently noted as high bicycle crash locations.

**Task 3.5 Deliverables:**

- One color copy of the draft feasibility study
- Digital versions of the draft feasibility study in PDF format
- Finalized bikeway facility alignment maps based on stakeholder and community feedback

**Task 3.6: Final Feasibility Study**

The Toole Design Team will refine the feasibility study and address any comments received from Town staff and the Advisory Board. The Toole Design Team will update the report, construction cost estimates, and funding sources, and will incorporate engineering design plans for the preferred alignment.

**Task 3.6 Deliverables:**

- One color copy of the final feasibility study
- Digital versions of the final feasibility study

**Task 4: Concept Engineering and Design Plans****Task 4.1: Draft Concept Design Plans**

The Toole Design Team will prepare concept engineering design plans for the preferred alternative. The plan set will be developed based on GIS data, aerial photography, and measurements collected during the site visit. The design will be developed based on the recommendations described in the Feasibility Study. The design concepts will include preliminary ideas for stormwater management, facility widths, surface and subsurface materials, signage and pavement marking, preliminary signal engineering, facility connections, and related site amenities.

The concept design plans will be prepared in accordance with the MassDOT Separated Bike Lane & Design Guide,



## 3.B.

and the AASHTO *Guide for the Development of Bicycle Facilities* (which Toole Design authored), among other resources.

### **Quantity and Cost Estimate and Quality Control/Quality Assurance (QA/QC) Review:**

The Toole Design Team will perform QA/QC for the concept design plans prior to submission to the Town. The Toole Design Team will submit a draft set of the concept design plans. The draft plans can be shared with MBTA to further coordinate design. The Toole Design Team will address one round of comments before submitting the final concept design plans to the Town.

#### **Task 4.1 Deliverables:**

- Concept design plans including plan view drawings depicting street and trail geometry, major construction items, signing and pavement markings, preliminary landscaping and stormwater management design
- Typical cross sections
- Construction cost estimates
- One copy of the draft concept engineering design plan for comment
- Digital version of the draft concept engineering design plans in PDF format

### **Task 4.2: Meetings with the Town Committees and Boards**

The Toole Design Team will meet with the Transportation Board, Bicycle Advisory Committee and, Public Transportation Advisory Board (PTAC) to discuss the draft concept design plans and respond to any comments.

#### **Task 4.2 Deliverables:**

- Document Meeting notes

### **Task 4.3 Final Concept Design Plans**

The Toole Design Team will finalize the concept design plans based on Town of Brookline and stakeholder agency review comments. The construction cost estimate will be updated as the concept design is completed. The Toole Design Team will perform a final QA/QC review to ensure that all comments have been addressed and furnish the final concept plan set to the Town in both hardcopy and electronic (AutoCAD 2015 compatible and PDF) format.

#### **Task 4.3 Deliverables:**

- Updated concept design plan set – approximately 30 layout segments at 1"=20' covering the length of the pathway (approximately 2.3 miles)
- Three copies of the final concept design plan
- One rendered roll plan for presentation
- Digital version of the final concept design plans in PDF format

# PROJECT SCHEDULE

Toole Design is excited and ready to begin work immediately upon selection and is committed to providing the Town of Brookline with a final report within 12 months from the notice to proceed. Key Toole Design Staff are available to meet this deadline and the schedule provided. We have a deep bench of staff to call on when additional effort is required to finish key deliverables, prepare for team and stakeholder meetings, and finalize report text and details.

		MONTH											
TASK		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
<b>Task 1</b>	<b>Project Management</b>	X											
<b>Task 2</b>	<b>Community Outreach and Engagement</b>												
Task 2.1	Community Workshops – Feasibility Study			X		X		X					
Task 2.2	Community Outreach – Concept Engineering Design										X		X
<b>Task 3</b>	<b>Feasibility Study</b>												
Task 3.1	Review Existing Plans and Studies												
Task 3.1	Site Visit												
Task 3.1	Existing Conditions Memorandum												
Task 3.2	Delineate Alternative Bikeway Facilities and Connections												
Task 3.3	Coordinate with MBTA												
Task 3.4	Meetings with the Town Committees and Boards	X			X		X		X				
Task 3.5	Draft Feasibility Study												
Task 3.7	Final Feasibility Study												
<b>Task 4</b>	<b>Concept Engineering and Design Plans</b>												
Task 4.1	Draft Concept Design Plans												
Task 4.2	Meetings with the Town Committees and Boards										X	X	X
Task 4.3	Final Concept Design Plans												

TOOLE DESIGN

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# FEE ESTIMATE

We are proud to submit our Cost Proposal for the Town of Brookline’s Bikeway Feasibility Study. The table below shows Toole Design’s proposed budget. The cost represents our initial estimate of the necessary level of effort. However, we are flexible and anticipate refining the approach in collaboration with the Town of Brookline and can provide further cost detail upon request.

TASKS	TASK HOUR SUBTOTAL	TASK FEE SUBTOTAL
Task 1: Project Management	80	\$11,600.00
Task 2: Community Outreach	250	\$31,900.00
Task 3: Feasibility Study	610	\$74,600.00
Task 4: Concept Plan	538	\$63,280.00
Expenses: (Data collection, printing, mileage)		\$18,500.00
<b>TOTALS</b>	<b>1478</b>	<b>\$199,880.00</b>



# TOOLE DESIGN

2 Oliver Street, Suite 305

Boston MA 02109

617.619.9910 | [www.tooledesign.com](http://www.tooledesign.com)

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**AGREEMENT BETWEEN  
TOWN OF BROOKLINE, MASSACHUSETTS  
And  
TOOLE DESIGN GROUP, LLC  
TOOLE# 60201**

This Agreement is made as of October 20, 2020 between Toole Design Group, LLC ("TOOLE") having its principal office of business at 8484 Georgia Avenue, Suite 800, Silver Spring, MD 20910, and the Town of Brookline ("Client"), (collectively the "Parties") having its principal office of business at 333 Washington Street, Brookline, MA 02445. TOOLE's project number shall be as follows: 60201

AGREEMENT

TOOLE and Client agree as follows:

1. This Agreement does not establish a joint-venture, partnership or principal-agent relationship between TOOLE and Client.
2. The scope of this Agreement (the "Project" or "Services") and time period of performance are as follows:

*Per Attachment A*

3. Client shall compensate TOOLE by paying a lump sum fee with a budget amount of \$199,880.00.. A more detailed description of the compensation for the Services may be found in *Attachment B*.
4. TOOLE shall submit invoices (no more frequently than once per month) based on work completed during that time period and Client shall pay TOOLE within ten (10) days after receipt of invoice.
5. This Agreement shall automatically terminate on August 31, 2021. In the event of failure to perform under this Contract, Client will provide written notice to TOOLE and TOOLE will have 5 business days to respond and cure, if there is no satisfactory cure Client may terminate Agreement. Either Party may terminate this Agreement with 30 days written notice to the other party, through no fault of either party. Upon any termination, TOOLE will be paid for all services completed through the date of termination.
6. Client shall arrange for access to and make all provisions for TOOLE to enter upon public and private property as required for TOOLE to perform the Services.
7. Client shall give written notice to TOOLE whenever Client becomes aware of any development that affects the scope or timing of TOOLE's Services.

### 3.B.

8. Financial records of TOOLE pertinent to TOOLE's compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices.
9. TOOLE shall maintain all records (including electronic records) in regard to this Agreement readily available and in legible form. TOOLE shall maintain all books, papers, records, accounting records, files, accounts, reports, cost proposals with backup data, and all other material relating to direct costs charged to this Project, and shall make all such material available at any reasonable time during the term of work on the Project and for three (3) years from the date of final payment to TOOLE auditing, inspection, and copying upon Client's request.
10. Any official notice or other communication required hereunder shall be sent by certified mail (return receipt requested), and/or other methods as mutually agreed upon, and shall be deemed given on the date which such notice is received.

To TOOLE at:           TOOLE DESIGN GROUP, LLC  
8484 Georgia Avenue, Suite 800  
Silver Spring, MD 20910

To Town of Brookline at:

Town of Brookline  
Department of Public Works, Transportation Division  
Brookline, MA 02445

11. TOOLE has or shall procure and maintain insurance for protection from 1) claims under workers' compensation acts, 2) from claims for damages because of bodily injury including personal injury, sickness, disease or death of any and all employees or of any person other than such employees, and 3) from claims or damages resulting from damage to, loss of use of, and/or destruction of property. TOOLE shall cause the Town of Brookline to be named as an additional insured on all relevant policies and shall provide a certificate of insurance demonstrating coverage pursuant to the requirements prior to initiating work.

TOOLE shall also procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by its negligent acts, errors, or omissions. TOOLE shall maintain this insurance at least until the completion of TOOLE's services.

12. TOOLE and its subrogees shall hold harmless and indemnify the Client, their directors, officers, employees, representatives and agents against any damage, injury, liability, and reasonable cost and expense, but only to the extent they arise out of any negligent acts or omissions, willful acts or omissions, and/or material breach of



### 3.B.

contract of TOOLE, its agents, servants, and employees or lower tiered contractors in the performance of this Agreement.

13. Client and its subrogees shall hold harmless and indemnify TOOLE, their directors, officers, employees, representatives and agents against any damage, injury, liability, and reasonable cost and expense, but only to the extent they arise out of any negligent acts or omissions, willful acts or omissions, and/or material breach of contract of Client, its agents, servants, employees or lower tiered contractors in the performance of this Agreement.
14. All original design calculations, field notes, quantity calculations, logos, maps, photographs, written reports, necessary project specific provisions, and other material including drawings prepared under this agreement ("Data"), and without regard to the media in which the Data was developed, shall be the property of the Client and TOOLE. Client shall make available to TOOLE drawings, specifications, schedules and other information and data which are pertinent to TOOLE's Services. These aforementioned non-public documents, information, and data shall remain the property of the Client and/or of another party if required. TOOLE shall not be responsible for any changes done to their design or product, by third parties or the Client, after it has been delivered to the Client.
15. Any dispute resolution process will be governed by the procedures outlined in this Agreement. Any disputes relating to this Agreement shall be submitted to a senior representative of each Party who shall have the authority to enter into an agreement to resolve the dispute ("Representative"). The Representatives shall not have been directly involved in the performance of the Services and shall negotiate in good faith. If the Representatives are unable to resolve the dispute within three weeks or within such longer time period as the representatives may agree, the dispute may be decided by alternative forms of dispute resolution (such as neutral mediation) as mutually agreed or either Party may then pursue its respective rights in law or equity. No written or verbal representation made by either Party in the course of any discussions between the Representatives or other settlement negotiations shall be deemed to be a party admission.
16. This Agreement shall be governed by and constructed and enforced in accordance with the laws of the State of Massachusetts.
17. If any legal proceedings should be instituted by either party to enforce the terms of this Agreement or to determine the rights of the parties hereto, each party shall pay for their own attorney's fees, expert witness fees, and costs.
18. Force majeure shall be any acts of God or the public enemy; compliance with any order, rule, regulation, decree, or request of any governmental authority or agency or person purporting to act therefore; acts of war, public disorder, rebellion, terrorism, or sabotage; floods, hurricanes, or other storms; strikes or labor disputes; or any other cause, whether or not of the class or kind specifically named or referred to herein, not

### 3.B.

within the reasonable control of the Party affected. A delay in or failure of performance of either Party shall not constitute a default hereunder nor be the basis for, or give rise to, any claim for damages, if and to the extent such delay or failure is caused by force majeure.

19. Client and TOOLE shall not be liable to each other for indirect, incidental, special, economic consequential, or punitive damages of any kind (including, but not limited to lost profits and operation costs).
20. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, termination or completion of the Project and/or Agreement.
21. In the event that any term or condition of this Agreement is held to be illegal, invalid, or unenforceable under the Law, such term or condition shall be deemed severed from this Agreement and the remaining terms and conditions shall remain unaffected and thereby continue in full force.
22. This Agreement represents the entire integrated agreement between TOOLE and Client and supersedes and replaces all of the terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, which have not been specifically incorporated by reference herein with respect to this Agreement. This Agreement may be changed, modified or altered only by written agreement of the parties.
23. During the performance of this Contract, TOOLE, for himself, his assignees and successors in interest (hereinafter referred to as the "TOOLE"), agrees as follows:
  - a. TOOLE will comply with the provisions of Chapter 151B, as amended, of the General Laws of Massachusetts relative to non-discrimination which are incorporated herein by reference and made a part of this Contract.
  - b. In the performance of work under this Contract, TOOLE shall not discriminate in employment practices or in the selection or retention of subcontractors or in the procurement of materials or rental of equipment on the grounds of race, color, religion, gender identity or gender expression, or national origin, or on the grounds of age or sex except when age or sex is a bona fide occupational qualification.

TOOLE will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of TOOLE's commitments under this section, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.



### 3.B.

- c. In all solicitations either by competitive bidding or negotiation made by TOOLE for work to be performed under a subcontract and for the procurement of materials and equipment, each potential subcontractor or supplier shall be notified in writing by TOOLE of TOOLE's obligations under this Contract relative to non-discrimination on grounds of race, color, religion, gender identity or gender expression, national origin, age or sex, and his obligations to pursue an affirmative course of action as required by paragraph (d).
- d. TOOLE will pursue an affirmative course of action as required by affirmative action guidelines adopted by the Human Relations Commission in effect on the effective date of the contract, or when calls for proposals are made, whichever is sooner, which are herein incorporated by reference, attached hereto, and made a part of this contract and to the nature and size of his work force, to insure that applicants are sought and employed, and that employees are treated, during their employment, without regard to their race, color, gender identity or gender expression, national origin or ancestry, or religion. No changes in affirmative action guidelines hereinafter adopted by the Commission shall be effective with respect to contracts already in effect, without the express written consent of TOOLE.
- e. In the event TOOLE fails to comply with the foregoing non-discrimination provisions of this Contract, the contracting agency of the Town, upon advice and counsel of the Human Relations Commission, shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - (1) withholding of payment due TOOLE under this contract until TOOLE complies, and/or (2) cancellation, termination or suspension of this Contract, in whole or in part.

For the purposes of this section the contracting agency of the Town shall accept as proof of noncompliance with the provisions of subsection (a), only final orders or decisions of the Massachusetts Commission Against Discrimination.


- f. The provisions of this section shall be deemed supplementary to, and not in lieu of, or in substitution for, the provisions of Massachusetts Law relating to non-discrimination, and other applicable Federal, State or Town law, by-law, rule, regulation and directive relative thereto. In the event of a conflict between the provisions of this section and, where inserted or incorporated in this contract, an applicable state or federal law, rule, regulation or directive, the conflicting provisions of the latter shall control.

3.B.

IN WITNESS WHEREOF, the Parties hereto have made, executed and agreed to this Agreement as the day and year first above written:

TOOLE DESIGN GROUP, LLC

TOWN OF BROOKLINE

By:  \_\_\_\_\_

By: \_\_\_\_\_

Name: RJ Eldridge

\_\_\_\_\_

Title: Executive Vice President

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Select Board






# 60201\_TooleDesign\_Brookline\_Contract

Final Audit Report

2020-07-27

Created:	2020-07-27
By:	Lindsay King (lking@tooledesign.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAATkp5KzQMDIKCmBXK1onaQICnsmNDAl2U

## "60201\_TooleDesign\_Brookline\_Contract" History

-  Document created by Lindsay King (lking@tooledesign.com)  
2020-07-27 - 3:38:58 PM GMT- IP address: 24.182.81.120
-  Document emailed to RJ Eldridge (reldridge@tooledesign.com) for signature  
2020-07-27 - 3:39:21 PM GMT
-  Email viewed by RJ Eldridge (reldridge@tooledesign.com)  
2020-07-27 - 9:43:55 PM GMT- IP address: 104.47.70.126
-  Document e-signed by RJ Eldridge (reldridge@tooledesign.com)  
Signature Date: 2020-07-27 - 9:44:40 PM GMT - Time Source: server- IP address: 71.163.134.189
-  Signed document emailed to Lindsay King (lking@tooledesign.com), Emmy Klint-Gassner (eklintgassner@tooledesign.com) and RJ Eldridge (reldridge@tooledesign.com)  
2020-07-27 - 9:44:40 PM GMT



### 3.B.

#### CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

RJ Eldridge

RJ Eldridge (Jul 27, 2020 18:07 EDT)

(Name of person signing bid)

Toole Design Group, LLC

(Company)

# 60201\_CERTIFICATE OF NON COLLUSION

Final Audit Report

2020-07-27

Created:	2020-07-27
By:	Lindsay King (lking@tooledesign.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAOu7jPcySNe0KK_YJLV4xoHj2kFn4tmcz

## "60201\_CERTIFICATE OF NON COLLUSION" History

-  Document created by Lindsay King (lking@tooledesign.com)  
2020-07-27 - 3:43:30 PM GMT- IP address: 24.182.81.120
-  Document emailed to RJ Eldridge (reldridge@tooledesign.com) for signature  
2020-07-27 - 3:43:47 PM GMT
-  Document e-signed by RJ Eldridge (reldridge@tooledesign.com)  
Signature Date: 2020-07-27 - 10:07:18 PM GMT - Time Source: server- IP address: 71.163.134.189
-  Signed document emailed to Lindsay King (lking@tooledesign.com), RJ Eldridge (reldridge@tooledesign.com) and Emmy Klint-Gassner (eklintgassner@tooledesign.com)  
2020-07-27 - 10:07:18 PM GMT

### 3.B.

#### TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

RJ Eldridge

RJ Eldridge (Jul 27, 2020 18:06 EDT)

Signature of person submitting bid or proposal

Toole Design Group, LLC

Name of Business

# 60201\_TAX COMPLIANCE CERTIFICATION

Final Audit Report

2020-07-27

Created:	2020-07-27
By:	Lindsay King (lking@tooledesign.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7xhZJ3IUH7AfUDt6jNGJwYlw8t40SX46

## "60201\_TAX COMPLIANCE CERTIFICATION" History

-  Document created by Lindsay King (lking@tooledesign.com)  
2020-07-27 - 3:41:46 PM GMT- IP address: 24.182.81.120
-  Document emailed to RJ Eldridge (reldridge@tooledesign.com) for signature  
2020-07-27 - 3:42:17 PM GMT
-  Document e-signed by RJ Eldridge (reldridge@tooledesign.com)  
Signature Date: 2020-07-27 - 10:06:48 PM GMT - Time Source: server- IP address: 71.163.134.189
-  Signed document emailed to Lindsay King (lking@tooledesign.com), RJ Eldridge (reldridge@tooledesign.com) and Emmy Klint-Gassner (eklintgassner@tooledesign.com)  
2020-07-27 - 10:06:48 PM GMT





3.B.

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Klein Agency, LLC P.O. Box 219  Timonium MD 21094		<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (410) 832-7600 <b>FAX (A/C, No):</b> (410) 832-1849 <b>E-MAIL ADDRESS:</b> certs@kleinagencyllc.com	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> RLI Insurance Company	
		<b>INSURER B:</b> Continental Casualty Company	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

## COVERAGES

CERTIFICATE NUMBER: 20-21

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

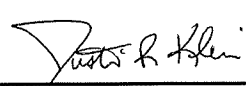
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			PSB0008624	01/01/2020	01/01/2021	EACH OCCURRENCE	\$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	<input checked="" type="checkbox"/> Contractual Liability						MED EXP (Any one person)	\$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	\$ 2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$ 4,000,000
	OTHER:						PRODUCTS - COMP/OP AGG	\$ 4,000,000
								\$
A	<b>AUTOMOBILE LIABILITY</b>			PSA0002827	01/01/2020	01/01/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)	\$
	<input type="checkbox"/> AUTOS ONLY	<input type="checkbox"/> AUTOS ONLY						\$
A	<b>UMBRELLA LIAB</b>			PSE0004279	01/01/2020	01/01/2021	EACH OCCURRENCE	\$ 4,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$ 4,000,000
	DED	RETENTION \$						\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			PSW0004796	01/01/2020	01/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y / N					E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> N	N / A				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
B	Professional Liability			MCH591868957	01/01/2020	01/01/2021	Per Claim:	2,000,000
							Aggregate:	3,000,000

## DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project Name: Brookline Bridle Path. Toole Design Project #: 60201. Note to Toole Design: Contact PM for date. If required by an insured written contract, executed prior to any loss, Town of Brookline is an Additional Insured on a primary and non-contributory basis under the General and Auto Liability Policies. If required by an insured written contract, executed prior to any loss, Waiver of Subrogation is provided for General, Auto, and Workers Compensation Policies. Umbrella Policy follows form over General, Auto, and Employer's Liability Policies. 30 day notice of cancellation, 10 day for non-payment.

## CERTIFICATE HOLDER

## CANCELLATION

Town of Brookline Department of Public Works, Transportation Division 333 Washington Street Brookline MA 02445	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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**TOWN OF BROOKLINE**  
**CONTRACT CODING APPROVAL FORM**

DEPARTMENT: DPW/Engineering &amp; Transportation Division

Prepared by: Todd KirraneVendor Name: Toole Design Group, LLCVendor #                     

Beacon St Bridle Path Feasibility & Concept

Contract Name: Design Study
Contract #                     

Purpose of Contract/Description\*

Amount of Contract \$ 199,880.00

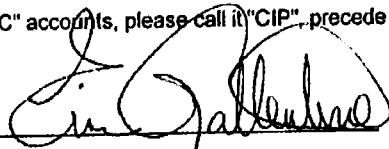
Conduct a Feasibility Study and Concept Design of the proposed multi-use path along the historic Beacon Street Bridle Path as originally designed by Franklin Law Olmsted as requested by Town Meeting

## CODING

Org #	Org Name	Acct #	Acct Name	Amount
4995SWB5	DPW CIP	524010	PROFESSIONAL/TECH SERVICE	\$ 32,000.00
4918K052	DPW CIP	6T0039	BICYCLE ACCESS IMPROV	\$ 123.00
4920K167	DPW CIP	524010	PROFESSIONAL/TECH SERVICE	\$ 117,757.00
4995SWB6	DPW CIP	524010	PROFESSIONAL/TECH SERVICE	\$ 50,000.00
				\$ -
				\$ -

\*For "K" or "C" accounts, please call it "CIP", precede by your Dept (e.g., 4909K001 would be "DPW CIP")

Department Head



Date

10/14/20

**Comptroller and Purchasing Approvals**

Funds Available/Codes Correct

Comptroller

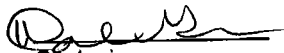


Date Approved by Comptroller

10/14/2020

Complies with Appropriate Procurement Law  
MGL ch 149, ch 30 30M, or ch 30B

Purchasing



Date Approved by Purchasing

10/14/20

### 3.C.

The Office of Town Counsel  
Memorandum

To: Select Board

From: Joslin Murphy

Re: Re-issuance of November 17, 2020 Special Town Meeting Warrants

Date: October 16, 2020

Cc: Mel Kleckner  
Melissa Goff

---

Under item 3C of the Select Board's October 20, 2020 meeting agenda, you will be considering the question of re-issuing the Warrants for the November 17, 2020 Special Town Meetings for the purpose of including remote access information in said Warrants in compliance with Section 8 of Chapter 92 of the Acts of 2020. Only the remote access information in the Warrants will be supplemented; the Articles under the previously issued Warrants will remain the same.

The following vote is recommended under this item:

**Voted: To re-issue the Warrants for the November 17, 2020 Special Town Meetings, replacing the paragraph immediately after the word "Greetings" with the following paragraphs:**

"In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet by means of the Zoom video conferencing platform and telephone conferencing system described more particularly below on November 17, 2020 at 7:00 o'clock in the evening, at which time and place the following articles are to be acted upon and determined exclusively by the representative Town Meeting.

Pursuant to Chapter 92 of the Acts of 2020, the Town Meeting shall be held remotely by the means requested in the accompanying letter from the Moderator dated August 27, 2020, as follows: The Moderator, Town Meeting Members, Town officials and registered voters residing in the town who have arranged with the Town Clerk to participate in the Meeting may access and witness the deliberations and actions taken at the Meeting via the Zoom videoconferencing platform and/or telephone conferencing by following the instructions to be provided to them in advance by the Moderator, the Town Clerk or a designee. Registered voters residing in the Town who wish to participate in the Meeting must submit a request to the Town Clerk at [jgolburgh@brooklinema.gov](mailto:jgolburgh@brooklinema.gov) not later than 7:00 PM on November 15, 2020. All other interested members of the public who wish to witness the deliberations and actions taken at the Meeting may do so via the live video streaming service provided by Brookline Interactive Group at [brooklineinteractive.org/live](https://brooklineinteractive.org/live) or on RCN Channel 15 or Comcast Channel 23."

**Voted further: to direct the Town Clerk to publicly post copies of such Warrants as required under Article 2.1.5 of the Town's General Bylaws.**

### 3.C.

#### Explanation

Pursuant to Section 8(d) of Chapter 92 of the Acts of 2020, the relief legislation that was enacted in order to authorize Town Meetings to be conducted remotely during the COVID State of Emergency, the warrants for such remotely conducted meetings are required to expressly state the information that is necessary “for the moderator, town meeting members, town officials and interested members of the public to access and witness the deliberations and actions taken at the town meeting remotely.” The foregoing vote is recommended to ensure compliance with this requirement of the Act. Once approved, notice of the Special Town Meeting Warrants must be given in accordance with G.L. c. 39, s. 10 and the by-laws of the Town, which state that they shall be filed with the Town Clerk and publicly posted at least 14 days before the Special Town Meeting. General By-laws, Section 2.1.5(A).

## 5.A.

Escrow or Title No. 55487-ACCOM

Project reference: Welltower

[\_\_\_\_], 2020

Fidelity National Title Insurance Company

485 Lexington Avenue, 18<sup>th</sup> Floor

New York, NY 10017

Attn: Mary R. McDonough

RE: Tax Certainty Agreement (the “Tax Certainty Agreement”) by and between the Town of Brookline (the “Town”) and Welltower Inc. (“Welltower”)

Dear Sir or Madam:

Reference is made to the above captioned Tax Certainty Agreement. The Town (acting by and through its Select Board), Welltower and Fidelity National Title Insurance Company (“Escrow Agent”) hereby acknowledge, agree and covenant as follows.

1. The Town and Welltower have delivered to Escrow Agent one (1) original of the Tax Certainty Agreement, which Tax Certainty Agreement has been executed by both the Town and Welltower, and a copy of which is attached hereto as Exhibit A.
2. The Tax Certainty Agreement will become effective upon the recording thereof in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.
3. Escrow Agent shall hold the Tax Certainty Agreement in escrow until Escrow Agent receives joint written instructions from the Town and Welltower directing Escrow Agent to record the Tax Certainty Agreement in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the “Joint Instructions”).
4. Upon receipt of the Joint Instructions, Escrow Agent shall record the Tax Certainty Agreement in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court and shall provide written notice and evidence of such recordation to each of the Town and Welltower (the “Confirmation Notice”).
5. Upon receipt by the Town and Welltower of the Confirmation Notice, this escrow letter shall immediately terminate and be of no further force and effect and Escrow Agent shall be discharged and released from any and all liability with respect to the Tax Certainty Agreement.
6. Escrow Agent is not a party to, and is not bound by, or charged with notice of any agreement out of which this escrow may arise, other than the terms and provisions of this escrow letter.

## 5.A.

7. Escrow Agent is acting solely as a stakeholder and depository as an accommodation, and is not responsible or liable for any matter or loss arising out of Escrow Agent's conduct hereunder, except for its fraud, willful misfeasance or gross negligence. Escrow Agent shall not be responsible or liable for the sufficiency, correctness, genuineness, or validity of the subject matter of this escrow letter, or for the identity or authority of any person executing any documents or instruments in connection herewith.
8. The Town and Welltower agree to jointly and severally, indemnify, defend and hold harmless the Escrow Agent from and against any loss, cost, claims, damage or expense, including, without limitation, any and all court costs and attorney's fees and expenses (collectively called "Expenses") incurred by Escrow Agent in connection with or in any way arising out of this escrow letter, other than Expenses resulting from Escrow Agent's fraud, willful misfeasance or gross negligence. The Escrow Agent may, at its own expense, consult with legal counsel in the event of any dispute or questions as to the construction of any provisions hereof or its duties hereunder, and it shall be fully protected in acting in accordance with the opinion or instructions of such counsel.
9. Escrow Agent shall be entitled to act or rely upon, and Escrow Agent shall be protected in acting or relying upon the genuineness and validity of any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other document Escrow Agent shall receive from any party hereto provided such documentation is simultaneously provided to all parties hereto.
10. Notwithstanding the foregoing, in the event that (a) Escrow Agent receives contradictory instructions from the parties hereto, or (b) there shall be any dispute between the Town and Welltower as to any matter arising under this escrow letter, or (c) there shall be any uncertainty as to the meaning or applicability of the provisions hereof or any written instructions received by Escrow Agent pursuant hereto, Escrow Agent may, at its option, deposit the Tax Certainty Agreement pending resolution with any appropriate court in the State of Massachusetts at the cost and expense of the Town and Welltower jointly and severally, and, upon making such deposit, Escrow Agent shall thereupon be discharged and released from any and all liability with respect to the Tax Certainty Agreement. The Escrow Agent may dispose of the Tax Certainty Agreement in accordance with a court order and shall be fully protected if it acts in accordance with any such court order.
11. This escrow letter shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.
12. This escrow letter may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.
13. All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this escrow letter shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified



## 5.A.

below, and shall be addressed to:

If to Welltower:

Welltower Inc.  
4500 Dorr Street  
Toledo, OH 43615  
Attention: General Counsel

With a copy to:

Law Office of Robert L. Allen Jr., LLP  
300 Washington Street  
Brookline, MA 02445  
Attention: Jennifer Dopazo Gilbert, Esq.

and to

Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110  
Attention: Stephen Schwartz, Esq.

If to the Town:

Town of Brookline  
Brookline Town Hall  
333 Washington Street  
Brookline, MA 02445  
Attention: Town Administrator

With a copy to:

Town of Brookline  
333 Washington Street  
Brookline, MA 02445  
Attention: Town Counsel

If to Escrow Agent:

Fidelity National Title Insurance Company  
485 Lexington Avenue, 18th Floor  
New York, NY 10017  
Attention: Mary R. McDonough

## 5.A.

- (a) By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;
- (b) By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or
- (c) By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

[Signatures appear of the following page]

5.A.

IN WITNESS WHEREOF, the parties have executed this escrow letter as of the date set forth above.

WELLTOWER INC.

By: 

Name: Matthew McQueen  
Title: Authorized Signatory

TOWN OF BROOKLINE SELECT BOARD:

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FIDELITY NATIONAL TITLE INSURANCE  
COMPANY

By: 

Name: Mary R. McDonough  
Title: Assistant Vice President

**IN RE: The parcels known as 117 Fisher Avenue (Assessors' Parcel I.D. No. 250-01-02) and  
124 Holland Road (Assessors' Parcel I.D. No. 250-03-05)**

**BROOKLINE, MASSACHUSETTS  
TAX CERTAINTY AGREEMENT**

This Agreement between WELLTOWER INC. a Delaware corporation, having an office at 4500 Dorr Street, Toledo, Ohio 43615 ("Welltower"; Welltower and its successors and assigns in title or interest the Premises are hereinafter collectively referred to as "Developer") and the Town of Brookline, a municipal corporation ("Town"), located in Norfolk County, Massachusetts and acting by and through its Select Board (the "Board"), (Developer and the Town being collectively referred to as the "Parties") is executed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the "Execution Date"), and made effective upon the date this Agreement is recorded in the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court (the "Effective Date"), upon the mutual promises and obligations hereinafter set forth and additional consideration which the parties acknowledge is adequate and appropriate, upon the following terms and conditions:

**PREAMBLE**

WHEREAS, the Town through its comprehensive plan seeks to encourage the redevelopment of underutilized, vacant and/or abandoned buildings and land in the town and specifically at the former Newbury College site and to be assured that such redevelopment results in the improvements remaining as taxable properties within the Town to help protect the Town's existing property tax revenue; and

WHEREAS, Welltower owns the parcels of real property known as and numbered as 117 Fisher Avenue (Parcel I.D. No. 250-01-02) and 124 Holland Road (Parcel I.D. No. 250-03-05) sometimes collectively referred herein collectively as the "East Parcel", which was acquired by Developer pursuant to that certain Quitclaim Deed dated September 5, 2019 recorded with the Norfolk Registry of Deeds (the "Registry") in Book 37136, Page 283, the legal descriptions of which are attached hereto as Exhibit A, which as of the date hereof consists of a several buildings and a parking lot;

WHEREAS, Welltower, Welltower TRS Holdco LLC, a Delaware limited liability company and the Town are parties to that certain Memorandum of Agreement by and between the Town of Brookline and Welltower Inc. and Welltower TRS Holdco LLC, dated as of [\_\_\_\_], 2020 and recorded in the Registry in Book [\_\_\_\_], Page [\_\_\_\_] (the "Memorandum of Agreement"); Capitalized terms used in this Agreement and not otherwise defined shall have their respective meanings as set forth in the Memorandum of Agreement;

WHEREAS, as of the Effective Date, each of the Town Meeting Approval Conditions and Special Permit and Other Required Approvals have occurred and/or have been satisfied;

WHEREAS, in accordance with and pursuant to the Memorandum of Agreement, Developer and the Town agree to execute this Agreement as of the date hereof and record a copy thereof in the Registry;

## 5.A.

WHEREAS, the Town and Developer seek to confirm their shared commitment to keeping the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential use, it may become exempt from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third or other applicable exemption; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and Developer have agreed that Developer to the Premises will make certain voluntary payments to the Town in certain circumstances in lieu of real estate taxes, as more particularly set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Developer and the Town agree as follows:

1. **Developer Commitment to Voluntary Payment to the Town.** Commencing with the first fiscal tax year following the Assessment Date, and ending ninety-five (95) years after the Effective Date of this Agreement (the "Term"), if and to the extent Developer is not otherwise obligated to pay real estate taxes for the Premises by virtue of the Premises being used for one or more Exempt Uses or Developer's tax-exempt status (the "Payment Conditions"), then, with respect to any fiscal tax year for which the Payment Conditions are satisfied Developer shall make a direct financial contribution to the Town in the amount equal to the real property taxes that would otherwise have been levied by the Town for all or any portion of the Premises were the Premises not used for one or more Exempt Uses or were Developer not precluded, based on its status, from the payment of real estate taxes under applicable law in such relevant fiscal tax year (the "Voluntary Payment"). In such event, the Town shall accept the Voluntary Payment in full satisfaction of Developer's obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 2, hereafter amended or adopted) on account of the Premises being used for an Exempt Use or Uses. As used herein the term "Assessment Date" shall mean January 1<sup>st</sup> or another date on which the Town Assessors by statute make the first determination of the value of real property following the Effective Date. As used herein the term "Exempt Use" or "Exempt Uses" shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or other similar law, whether currently in existence or adopted during the Term of this Agreement.

2. **Payment of the Voluntary Payment to the Town.** The Voluntary Payment shall be paid to the Town in quarterly installments on the date real property taxes are due for each fiscal tax year during the Term for which the Payment Conditions are satisfied, and the Town shall provide Developer with a written statement of the portion of any Voluntary Payment due not less than thirty (30) days prior to the due date. Developer shall have the right to contest the amount of the Voluntary Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties, provided Developer shall, before commencing legal action, first use good faith efforts to mediate the issue of valuation with the Town's Assessors.

3. **Termination of Agreement.** The Town or Developer shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 8, in the event that, at any time after the Effective Date the



federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by Developer of taxes, similar assessments or payments in lieu of such taxes on the Premises used for one or more Exempt Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or Developer, with the exception of a change that would have the effect of expanding the uses covered by the term "Exempt Uses". This Agreement shall not in any manner whatsoever restrict the Town's exercise of its police power. Upon transfer of title of the Premises, the grantor Developer's obligations under the Agreement shall automatically terminate and the grantee Developer (e.g., the successor owner of the Premises) shall be bound by the terms of this Agreement as more particularly described in Section 8(j) of this Agreement.

4. **Period of Restrictions.** It is the intent of the parties that the restrictions set forth herein be imposed for the duration of the Term, and Developer hereby agrees and acknowledges that (a) the restrictions set forth herein shall not be deemed to be "unlimited as to time" within the meaning of Massachusetts General Laws, Chapter 184, Section 23, (b) prior to the expiration of the initial thirty (30) years of the Term and prior to the expiration of any subsequent renewal period, this Agreement and the restrictions set forth herein may be renewed by the Town from time to time thereafter for additional periods not in excess of twenty (20) years each, such renewal to be effectuated in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 (as may be amended from time to time) or any successor statute.

5. **Representations as to Authority.**

a. *The Town's Authority.* As of the Execution Date, the Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town's Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the Town, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

b. *Developer's Authority.* As of the Execution Date, Developer represents that it is duly organized, validly existing and in good standing under the laws of the State of its incorporation, that it is qualified to do business in, and in good standing under the laws of, the State of Massachusetts and that has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. Developer represents that (i) the individual executing and delivering this Agreement on Developer's behalf has the authority to do so, and such signing authority has been authorized by all necessary corporate action taken by and on the part of Developer, (ii) the Agreement has been duly and validly authorized, executed and delivered by

Developer, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of Developer, enforceable against Developer in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against Developer, Developer agrees to use best reasonable efforts to defend the validity and enforceability of this Agreement.

6. **Lien/Collection Remedies.** Upon the failure of Developer to make any Voluntary Payment to the Town when the Payment Conditions were otherwise satisfied, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that the Voluntary Payment may constitute a fee for collection proceedings and may constitute a lien on the property for collection purposes. Within no more than ten (10) days following written request from time to time to the Town Tax Collector, the Tax Collector shall provide Developer (e.g., the record owner of the Premises) with a written statement to Developer and any potential purchaser of or lender to the Premises certifying Developer's and the Town's compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payment.

7. **Deed Reference and Affirmation of Successor In Title.** Developer agrees that during the Term each successive deed of the Premises executed and delivered by the grantor shall contain the following statement:

"Reference is made to that certain Tax Certainty Agreement by and between Developer and the Town of Brookline dated \_\_\_\_\_, \_\_\_\_\_, recorded with Norfolk County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_ (together with all amendments duly made and recorded, the "Tax Certainty Agreement"). By acceptance and recording of this deed, the Grantee (i) acknowledges and accepts the Tax Certainty Agreement, (ii) acknowledges that Grantor is hereby released in full from all obligations of "Developer" under the Tax Certainty Agreement and (iii) agrees that the Tax Certainty Agreement shall be binding and enforceable against the Grantee in accordance with its terms."

Developer and such successors in title shall notify the Town in the manner provided in Section 8(j) hereof of the conveyance of the Premises and shall provide the Town with a copy of the deed evidencing the same conforming to this Section 7.

8. **Miscellaneous Provisions.**

(a) **Notices.** All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed to:

**If to Developer:**  
Welltower Inc.  
4500 Dorr Street  
Toledo, OH 43615

## 5.A.

Attention: General Counsel

With a copy to:

Jennifer Dopazo Gilbert, Esq.  
Law Office of Robert L. Allen Jr., LLP  
300 Washington Street  
Brookline, MA 02445

**If to the Town:**

Town of Brookline  
Attn: Town Administrator  
Brookline Town Hall  
333 Washington Street  
Brookline, MA 02445

With a copy to:

Town of Brookline  
Attn: Town Counsel  
333 Washington Street  
Brookline, MA 02445

\_\_\_\_ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

\_\_\_\_ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

\_\_\_\_ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is terminated or rendered of no effect due to the invalidity, illegality, or unenforceability of any of its provisions, those Developer obligations that otherwise would survive the Term shall end. The

## 5.A.

captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall, except as provided in Sections 5 and 9, survive the Term for so long as applicable; and all of the provisions of this Section 9 shall also survive the Term in relation to any of this Agreement's other surviving provisions.

(f) Real Property. All references in this Agreement to real property or property owned by or of Developer shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and Developer agree that this Agreement provides the Town with protection of its tax base, but nothing in this Agreement in any way restricts the Town's complete discretion in the exercise of its police power or imposes any restrictions on Developer's complete discretion to determine whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, one or more Exempt Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. The Town and Developer each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. Developer is entering into this Agreement voluntarily; and nothing in this Agreement or Developer's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by Developer of any regulatory, statutory or contractual obligation to make the Voluntary Payment or any other payment to the Town on account of real property owned by Developer for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by Developer under, and subject to all of the terms and conditions of, this Agreement.

(h) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be

## 5.A.

an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(i) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(j) Successor In Title. This Agreement shall bind Developer and its successors and assigns in title to the Premises and shall be deemed to “run with the land” for the duration of the Term. Any Developer, as grantor of title to the Premises, shall be released from all obligations as “Developer” under this Agreement upon the execution by such Developer, and subsequent recordation in the Registry, of any deed transferring title of the Premises (a “Premises Deed”), which Premises Deed shall include the paragraph required pursuant paragraph 7 above. Simultaneously with the recording of a Premises Deed in the Registry, either grantor or grantee thereunder shall provide written notice to the Town of the recording of such Deed, the transfer of title to the Premises, and the notice addresses for grantee thereunder for purposes of notices under this Agreement, including, without limitation, Section 8(a).

(k) Recording. This Agreement shall be recorded at the Norfolk County Registry of Deeds and Norfolk Registry District of the Land Court.

**IN WITNESS** whereof the parties have executed this Agreement under seal as of the Effective Date.

Welltower Inc.

Town of Brookline  
Select Board:

By [Signature]

Hereunto duly authorized

Date: 10-8-2020

Hereunto duly authorized  
Date: \_\_\_\_\_

County of Lucas

State of Ohio

On this 8<sup>th</sup> day of October, 2020, before me, the undersigned notary public, personally appeared Matthew McQueen of Welltower Inc. as Authorized Signatory Welltower Inc. through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose..

[Signature]  
Notary Public

Personally Known ✓  
Produced Identification \_\_\_\_\_  
Expires: \_\_\_\_\_  
Type of Identification \_\_\_\_\_

My Commission



Theresa S Whetro  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
June 16, 2025

## COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me, the undersigned notary public,  
 personally appeared \_\_\_\_\_,  
 \_\_\_\_\_, \_\_\_\_\_ Select Board, of the  
 Town of Brookline, proved to me through satisfactory evidence of identification to be the persons  
 whose names are signed on the preceding or attached document, and acknowledged to me that they  
 signed it voluntarily for its stated purpose as the Board of Selectmen of the Town of Brookline.

\_\_\_\_\_  
 Notary Public

Personally Known \_\_\_\_\_  
 Produced Identification \_\_\_\_\_  
 Expires: \_\_\_\_\_  
 Type of Identification \_\_\_\_\_

My Commission



5.A.

Exhibit A

Legal Description

Exhibit A

EXHIBIT APARCEL ONE (117 Fisher Avenue):

BEGINNING at a monument in the easterly line of Fisher Avenue, thirteen hundred six (1,306) feet from Boylston Street at the northwest corner of the land conveyed to the Inhabitants of the Town of Brookline by Horace N. and John H. Fisher, thence

NORTHEASTERLY	on said land at right angles with said Avenue, 264.02 feet to a monument; thence
NORTHERLY	on said land 250.76 feet to a monument at a point where the fence bounding said land as it now runs makes an angle; thence
SOUTHWESTERLY	by a straight line drawn 414.92 feet to a point in the easterly line of said Avenue 180 feet northerly from the point of beginning, and thence
SOUTHERLY	by the easterly line of said Avenue 180 feet to the point of beginning.

Or however otherwise bounded and described. Containing sixty-three thousand seven hundred and seventy-five (63,775) square feet, more or less, according to a plan made by Fuller and Whitney dated August 11, 1884, and recorded with the Norfolk County Registry of Deeds in Book 559, Page 392.

PARCEL TWO (124 Holland Road):

A certain parcel of land, with the improvements thereon, situated on Fisher Avenue, Brookline, Massachusetts, and shown as the lot marked "C" on a plan entitled "Plan of Land in Brookline, Mass." by E. Worthington, Engineer, dated July 15, 1926, recorded with Norfolk County Registry of Deeds, Book 1707, Page 513, bounded and described as follows:

NORTHERLY	by Holland Road by two measurements, 260.70 feet and 102.00 feet;
EASTERLY	by land now or formerly of Herbert T. Boardman shown as the lot marked "D" on said plan 267.37 feet;
SOUTHERLY	by Tract II herein, 298.18 feet;
WESTERLY	by Fisher Avenue, 323.75 feet;
NORTHWESTERLY	by the curve forming the southeast corner of said Holland Road and Fisher Avenue, 23.84 feet;

All as shown on said plan and containing 105,081 square feet of land, according to said plan.



# *Town of Brookline*

## *Massachusetts*

**Department of Planning and  
Community Development**

Town Hall, 3<sup>rd</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2130 Fax (617) 730-2442  
ASteinfeld@brooklinema.gov

**Alison C. Steinfeld**  
Director

**TO:** Select Board  
**FROM:** Alison C. Steinfeld, Planning Director  
**SUBJ:** Authorization to Hire Assistant Director for Sustainability Planning  
**DATE:** October 15, 2020

---

I am respectfully requesting authorization to fill the newly created position of Assistant Director for Sustainability Planning. Attached please find the job description together with the Authorization to Hire Request Form.

This position will head a fourth division within the Planning Department, joining Community Planning, Regulatory Planning, and Economic Development-Long-term Planning.

I would like to acknowledge and commend the extraordinary efforts and dedication of Kara Brewton, Economic Development Director, who has assumed responsibility for continuing the Town's sustainability efforts for almost a year in addition to fulfilling her ongoing responsibilities (expanded significantly in response to COVID) in an exemplary fashion.

The Planning Department looks forward to filling the position of Assistant Director for Sustainability Planning as soon as possible so that we may aggressively work to meet the Select Board's climate action goals. As always, we are committed to working closely with the Human Resources Department to expand outreach to create a diverse candidate pool.

Thank you.

Attachments



# Town of Brookline

## Massachusetts

### Authorization To Hire Request Form

1. Position **TITLE:** Assistant Director for Sustainability Planning Grade: T-11
2. Department: Planning & Community Development Division: Sustainability
3. Position Control #: \_\_\_\_\_ Prior Incumbent: 510101
  - a. Reason for Leaving: new position
4. Budgetary Information:
 

Department Code: 17201739 Budget Code: 510101 % 100

☐ Grant Funded-Name of Grant: \_\_\_\_\_ ☐ Revolving Fund ☐ Enterprise Fund
6. Employment Type:
 

☒ Full-Time: # of hours/week: 37.5 ☐ Part-Time: # of hours/week: \_\_\_\_\_

☒ Permanent ☐ Temporary: expected end date (required) \_\_\_\_/\_\_\_\_/\_\_\_\_
7. Method of Fill:
 

☐ Promotion – To be Posted Internally from: \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_

☒ New Hire ☐ Transfer – Please explain: \_\_\_\_\_
8. List the top three essential functions of this position:
  1. Implements programs & initiatives to advance Town's climate action goals
  2. Identifies, applies for, and manages sustainability grants including Green Communities
  3. Coordinates & supports all municipal sustainability projects and initiatives
9. I have considered the following alternatives to filling this position:  
 Fill the now vacant Sustainability Program Administrator position.  
 \_\_\_\_\_  
 \_\_\_\_\_
10. The alternatives are less desirable than new hire action for the following reasons:-continued on reverse side-  
Per a consultant's recommendation: the "position requires....the authority to implement the priorities of the Climate Action Plan. A division director carries that level of authority" (Collins Report-August 2020)

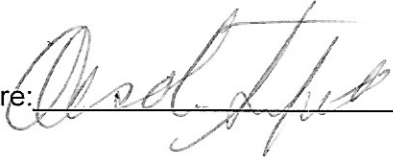
Authorization To Hire Request Form

## 11. Suggested sources for specialized recruitment advertising: (other than local papers)

Human Resources will work closely with the department to post the position widely with the ProDiversity Network, ZipRecruiter, Indeed, all of which have multiple targeted affinity group job boards as well as any other relevant groups.

## 12. Please attach the current position description.

## 13. Signatures:

Department Head Signature: 	Date: <u>10/15/20</u>
Human Resources Director: _____	Date: _____
Town Administrator: _____	Date: _____

## 14. Approvals:

Date on BOS Agenda: _____	Date Approved: _____
---------------------------	----------------------

## 15. Notes:

**Assistant Director for Sustainability Planning**

**Grade T-11  
Exempt, Non-Union**

**Position Purpose:**

The purpose of this position is to perform complex professional work related to the development, implementation, promotion and monitoring of Town initiatives pertaining to sustainability including environmental, energy, climate-change, and similar programs and issues, as well as related federal, state and local programs; all other work as required.

**Supervision:**

*Supervision Scope:* Performs varied and responsible duties requiring a thorough working knowledge of departmental and municipal operations. Exercises judgment and initiative to carry out assignments independently, analyzes situations and conditions, and recommends appropriate course of action from among many alternatives.

*Supervision Received:* Work is performed under the general supervision of the Planning Director, following department policies and appropriate professional standards. Resolves procedural problems independently, requesting assistance with unusual situations that do not have clear precedents.

*Supervision Given:* Responsible for the Sustainability Planning Division of the Planning Department, including oversight of any staff and budget.

**Job Environment:**

Work is performed under typical office conditions; the noise level is moderate. Makes occasional site visits with possible exposure to the hazards associated with construction sites. Attends frequent evening meetings.

Operates an automobile, computer, printer, copier, calculator, telephone, and other standard office equipment.

Has access to department-related confidential information, contracts, facility data, and Town utility information.

Makes frequent contacts with other Town departments, boards and committees, and the general public. Contacts are in person, in writing, by telephone and remotely and require persuasiveness, resourcefulness and discretion to influence the behavior of others.

Errors in judgment or omissions could result in loss of municipal funds and have serious financial and legal ramifications.

*Created: October 12, 2020  
Assistant Director of Sustainability Planning  
Town of Brookline, MA*

## 6.A.

### **Essential Functions:**

*(The essential functions or duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.)*

- Leads the planning for and implementation of municipal sustainability initiatives and programs in support of the Town's commitment to sustainable practices.
- Updates the Town's Climate Action Plan to include a detailed, long-term strategic plan with actionable goals, projects, and initiatives as well as an implementation plan and clear timelines.
- Provides administrative and professional staff support to the Select Board's Climate Action Committee (SBCAC) or its successor in preparing policy recommendations to the Select Board.
- Works closely with other municipal departments in order to promote sustainability including but not limited to issues regarding building design alternatives, energy usage, monitoring or analysis of said usage, energy efficiency initiatives, and fossil fuel-free initiatives in Town-owned buildings and facilities.
- Coordinates working teams comprised of private volunteers and coordinates the involvement of municipal officials and staff to build collaborative community-municipal initiatives.
- Examines existing mechanisms and develops new and creative concepts to incentive the private sector to incorporate fossil fuel free infrastructure as well as other sustainability measures into construction and renovation of real property.
- Identifies opportunities for sustainability-related funding and/or grants from public and private sources and coordinates the preparation and submission of applications.
- Manages the (Massachusetts) Green Communities grant and other local, state, and federal grant programs related to energy resources, greenhouse gas reduction, and other sustainability initiatives including data administration and fiscal management.
- Coordinates communication, education, research, policy analysis, and implementation of policies and programs related to energy resources and sustainability in support of Brookline's designation as a Green Community.
- Promotes energy conservation and efficiency as well as climate control initiatives to reduce the net production of greenhouse gas (GHG) emissions in Brookline in accordance with the Climate Action Plan.
- Participates in and/or, when appropriate manages, energy, waste, recycling, greenhouse gas reductions and other environmental data collection efforts.
- Coordinates the measuring and monitoring of sustainability initiatives and programs against key performance indicators.
- Develops, in collaboration with appropriate municipal staff, detailed and comprehensive

*Created: October 12, 2020  
Assistant Director of Sustainability Planning  
Town of Brookline, MA*



## 6.A.

financial impact statements including project cost, budget impacts, cost/benefit analyses, identification of opportunity costs, etc. for sustainability initiatives to inform decision-making and prioritization of such initiatives.

- Maintains ongoing interaction on behalf of the Town with state agencies, other municipalities, the regional planning agency, utility companies, quasi-public agencies, foundations, and businesses related to grant programs, energy resources, greenhouse gas reduction, and other regional and state planning initiatives related to sustainability to further local, regional and state goals to reduce greenhouse gas emissions and better prepare Brookline to adapt to climate change.
- Coordinates the preparation of sustainability-related mandated reports to the Commonwealth of Massachusetts.
- Engages with other government jurisdictions, community groups, and stakeholders to advocate for sustainability initiatives at the direction of the Planning Director.
- Works with Regulatory Planning staff to review zoning and other by-laws, initiatives, policies, or practices to evaluate compliance with sustainability regulations and to recommend amendments thereto.
- Directs promotional activities including creation and updates of print, web and social media content related to sustainability.
- Performs similar or related work as required, directed or as situation dictates.
- Serves as a public spokesperson for the Town's sustainability initiatives.

### **Recommended Minimum Qualifications:**

#### Education, Training and Experience:

Master's degree in Environmental Sciences, Environmental Studies Energy or Environmental Policy or related field and five years of experience in sustainability, including the management of energy-related programs. Bachelor's Degree in the aforementioned fields and seven years of relevant experience will be considered, or any equivalent combination of education and experience.

#### Special Requirements:

A valid motor vehicle operator's license

#### Knowledge, Ability and Skills:

*Knowledge:* Thorough working knowledge of climate change science, social behavior change, and organizational change strategies. Knowledge of municipal and private sector sustainability standards such as Passive House, Net Zero, Institute for Living Future, 2030 Districts, LEED, etc. Familiarity with Mass Energy Insight and Energy Star programs a plus. Working knowledge of

*Created: October 12, 2020  
Assistant Director of Sustainability Planning  
Town of Brookline, MA*

## 6.A.

Microsoft Office including but not limited to Word and Excel as well as an ability and willingness to learn new software, as appropriate.

*Ability:* Proven ability for creating, implementing, and maintaining environmental management programs. Ability to successfully facilitate various departmental and interdepartmental teams of professional and technical staff. Ability to negotiate on behalf of the Town contracts and partnership agreements with regards to energy procurement, renewable energy generation construction projects, sustainability consultant work, etc. Ability to establish cooperative working relationships with a variety of governmental agencies. Ability to analyze complex issues and to develop relevant and realistic plans, programs, and recommendations. Ability to conduct independent research and to analyze and interpret results. Ability to communicate in person, in writing, and by telephone; and ability to use persuasiveness, resourcefulness, and discretion to influence the behavior of others.

*Skills:* Demonstrated grant writing and program management skills, greenhouse gas accounting and management. Demonstrated skills in developing public education/ communication programs related to sustainability. Demonstrated skills in leading the negotiation of complex public-private agreements. Excellent verbal and written communication and presentation skills, and ability to conduct public meetings. Superior organizational skills.

### **Physical Requirements:**

*The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.*

Regularly required to walk, stand, sit, talk, and hear; operate objects, tools, or controls; pick up paper, files, and other common office objects. Lifts/moves objects weighing up to 10 pounds.

Communicates verbally and in writing. Vision and hearing at or correctable to normal ranges. Ability to operate a keyboard at an efficient speed.

*(This job description does not constitute an employment agreement between the employer and employee. It is used as a guide for personnel actions and is subject to change by the employer as the needs of the employer and requirements of the job change.)*

Created: October 12, 2020  
Assistant Director of Sustainability Planning  
Town of Brookline, MA

From: Heather A. Hamilton  
Sent: Tuesday, October 13, 2020 12:47 PM  
To: Melvin Kleckner; Bernard Greene  
Cc: Devon Williams; Justin Casanova-Davis  
Subject: Fw: Recorded Meetings

Hi Mel and Bernard,  
Raul and I have reached agreement on which Boards to recommend we pilot to record their meetings.

Zoning Board of Appeals  
Transportation Board  
Diversity and Inclusion  
Advisory on Public Health  
Housing Advisory Board



SUPT. MARK P. MORGAN  
ACTING CHIEF OF POLICE

## BROOKLINE POLICE DEPARTMENT

*Brookline, Massachusetts*

**Sergeant David Hill**

Patrol Supervisor

617-730-2654

[dhill@brooklinema.gov](mailto:dhill@brooklinema.gov)

October 14, 2020

TO: Superintendent Morgan

RE: Longwood Mall Street Closure

Sir,

I have reviewed the memorandum from Ms. Metral of 42 Beech Rd written on behalf of the Longwood Mall Neighborhood. The intent of the requested Halloween evening road closure appears to be to discourage "Trick or Treating" and limit vehicular traffic that "could be a problem for the elders and the children" in the neighborhood. The Town of Brookline has prohibited traditional door-to-door trick or treating for this year and will not be allowing block parties or permitting road closures. I understand that the neighborhood believes that their circumstances are different because they intend to avoid a block party, however closing a street to accommodate a children's parade and protect the residents from vehicular traffic seems consistent with the reasoning for a street closure request for a block party. In ordinary circumstances, I would refer them to the formal block party street closure process which would include an application to be reviewed by our Community Service Division.

There are no documented incidents to corroborate the neighborhood's increased concern for people gathering. I reviewed the CAD call history over a two year period for Beech Rd and Chatham St, and I was only able to locate two potential quality of life calls for service: youths ringing doorbells in June of 2019, and a vehicle parked on the tree mall last month. Deterring groups of trick or treaters is not a challenge that will be unique to this neighborhood, and my apprehensions are that a street closure would have an opposite effect and attract people to the area. I believe a request for special attention by on-duty personnel is reasonable, however at this time I find no public safety reasons to support a road closure.

Respectfully submitted,

Sgt. David Hill S-14



Public Safety Building, 350 Washington Street, Brookline, Massachusetts 02445  
Telephone (617) 730-2249 ♦ Facsimile (617) 730-8454

## 8.A.

**From:** Alexandra Metral [mailto:alex@pyralis.com]

**Sent:** Tuesday, October 13, 2020 2:06 PM

**To:** Bernard Greene; Heather A. Hamilton; Ben Franco; Melvin Kleckner; Nancy Heller; Raul Fernandez; John VanScoyoc

**Subject:** Fwd: Please: road closures for Halloween

Dear Bernard, Heather, Ben, Nancy Raul , John and Mel; Select Board/Town Administrator's office.

We spoke to Todd Kirrane and he asked our request to be sent to your fine group.

We (Longwood Mall Neighborhood) wish to have two streets closed to all but abutters on Halloween evening for a few hours. It is an unusual neighborhood, and we mean this closure for the opposite reason of the block-party type of closures such as Brook st traditionally has. Our neighborhood has decided to NOT have trick or treating, no candy, and decided the children should be able to physically distance parade down the street during the early evening hours. (neighbors have decided to come to their steps to wave) . All families have been made aware of our no-trick or treating decision, and all are in agreement. We can provide a letter signed by all but the traveling neighbors.

In addition, we wish to curtail traffic to Longwood Mall for this evening only. During this pandemic, the Longwood Mall has received far more visits , ball games and picnickers as people find solace in open air spaces. At night we have received more folks ducking under the boughs of the Beech wood trees for hidden drinking and smoking get togethers. Daytime activity has been wonderful, both nighttime and daytime activities people are just not wearing masks. It has been worrisome. Come Halloween, we neighbors want a message of "no candy here, no parties here". (we can make signs) .

The arches and trees of the Longwood mall have long been a place for hidden parties and meet ups. We are hoping to curb this behavior for this night.

Safety for the children is paramount. We are unusually densely populated with children, we have 16 minors in our short one sided Beech road, the small Longwood Mall neighborhood holds over 30, as well as over 20 seniors - half are octogenarians. In just this block.

We are asking for Colchester st and Beech Road to be closed to all but abutters. We are flexible on time; but see 5pm - 8 pm as the core hours where parties on the Longwood mall and traffic could be a problem for the elders and the children. The neighborhood are making friendly "No trick or treating, please" signs for the block entrances.

We understand that there are no permits for block parties, we are hoping you will see that our circumstances warrant a permit for extra safety for us, to the Longwood Mall neighborhood this halloween season .

THANK YOU

Alexandra Metral  
Precinct One, Town Meeting Member

42 Beech Road Brookline Massachusetts  
(617) 230-6267



## Brookline Commission for Women (As of 10/20/20)

### MEMBERSHIP, APPOINTMENT, TERM

(a) The Commission shall consist of **eleven members**, all of whom shall be appointed by the Select Board to serve for a term of three years.

(b) The initial appointments shall be made for staggered terms as follows: the term of three members shall expire after one year, the term of four members after two years and the terms of four members after three years. When a vacancy occurs, an appointment shall be made by the Select Board. The Commission shall recommend to the Board of Selectmen candidates to fill vacancies. A person is not precluded from serving more than one term. Commissioners must be residents of the Town of Brookline.

### **MEMBERS:**

1. Jennifer Goldsmith.....Term expires 2020 - Acting Secretary
2. Nicole McClelland.....Term expires 2020 - Acting Vice Chair
3. Grace Watson.....Term expires 2020 - Acting Treasurer
4. Rebecca Stone..... Term expires 2021 - Acting Chair
5. Dr. Gloria Rudisch.....Term expires 2021
6. Felina Robinson..... Term expires 2021
7. Hadassah Margolis..... Term expires 2021
8. Elizabeth Stillman ..... Term expires 2021
9. Meenakshi Garodia.....Term expires 2022
10. Homa Sarabi-Daunais..... Term Expires 2023

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For interview  
Aileen Lee 10.20.20

**THIS IS AN ELEVEN MEMBER BOARD**





## 9.B.

- Consultant to Quincy Asian Resources, Inc. (QARI) and Quincy Public Schools (QPS) to provide appropriate services to the Chinese immigrant families

*Asian Community Counseling Program Coordinator* – July 2013 to October 2014

- Consultant to community providers around cultural competency
- Marketing services provided by the ACCP staff
- Coordinating referrals from community providers to ACCP staff
- Implementing training to interns interested in working with the Asian community
- Providing clinical training to interns
- Chairing ACCP monthly meetings

### **Quincy Asian Resources, Incorporated**

**Quincy, MA**

*Consultant* – July 2008 to present

- Complete evaluation on at-risk youths identified by Quincy Public School and QARI
- Make recommendations for further evaluation, testing, or services
- Assist schools in finding services with appropriate language capacity
- Assist in programs development for immigrant youth
- Consult to organization's strategic planning and expansion of services
- Developed and presented a 6-weeks parenting program to immigrant families
- Developed and provided cultural competency trainings to community agencies within the South Shore area

### **South Cove Community Health Center**

**Boston, MA**

*Psychology Intern* – September 2006 to June 2007 (F-1)

- Intake and diagnostic assessment; individual therapy with adults and children in Cantonese and Mandarin
- Provide parent guidance and support
- Serve as collateral to clients; communicating with client's lawyers, schools, doctors or case managers
- Administer cognitive testing to help individuals establish appropriate cognitive level and help them advocate for appropriate services

### **South End Community Health Center**

**Boston, MA**

*Psychology Intern* – September 2005 to June 2006 (F-1)

- Intake and diagnostic assessment; individual therapy with adults and children
- Advocated for and allied to the children and family
- Administered and discussed neuropsychological testing and projective testing
- Member of family assessment team

### **Brookline High School**

**Brookline, MA**

*School Psychology Intern* – September 2004 to June 2005 (F-1)

- Administered cognitive and projective testing, and produced reports of the results
- Presented reports in IEP meetings
- Counselor for the coaching program – helped with executive functioning and counseled students
- Co-led a Therapy Group for adolescent girls with political trauma background

## **Education**

### **Massachusetts School of Professional Psychology**

Doctorate in Psychology (Psy.D.), June 2009

Clinical Psychology; concentration in children and adolescent.

### **Boston University**

Master of Arts in Psychology, May 1998.

Concentration in child psychopathology and family environments.

## 9.B.

Bachelor of Arts in Psychology, Cum Laude, May 1998.  
Concentration in developmental psychology.

<b>Licensure</b>	Clinical Psychology MA Licensure #9692
<b>Teaching</b>	William James College, Summer 2019 – Introduction to Family and Systems Theory
<b>Talk</b>	Asian Women’s Action for Resilience and Empowerment (AWARE) Protocol Training – Presented to Wellesley College and Harvard University. Cultural Competency Training – Chinese Immigrant Families – Presented to Department of Children and Families, Quincy Public School, South Shore Stars, Inc, Cultural Competency Workshop – Working with International Students – Brandeis University
<b>Research</b>	Boston University, School of Social Work – Asian-American Women’s Health Initiative Project.
<b>Language</b>	Conversational Mandarin and Cantonese



## Economic Development Advisory Board

(as of October 20, 2020)

### MEMBERS:

Anne Meyers, Co-Chair.....Term expires 2021

Paul Saner, Co-Chair.....Term expires 2020

Alan Christ.....Term expires 2019

Cliff Brown.....Term expires 2020

Derrick Choi.....Term expires 2020

Susan Houston.....Term expires 2021

Carol Levin.....Term expires 2021

Kenneth Lewis.....Term expires 2019

Thomas Nally.....Term expires 2019

Marilyn Newman.....Term expires 2019

Alden Raine.....Term expires 2021

Donald Warner.....Term expires 2019

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### Recent activity:

Paul Saner interviewed for reappointment on 8/25/20

Alan Christ interviewed for reappointment on 9/8/20

Derrick Choi interviews for reappointment on 9/22/20

Jeff Wachter interviews as a new appointment 9/22/20

Tom Nally interviews for reappointment on 9/29/20

Cliff Brown interviews for reappointment on 10/6/20

Kenneth Lewis interviews for reappointment 10.13.20

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\*Marilyn Newman to interview for reappointment on 10/20/20

## Online Form Submittal: Committee Reappointment Interest Form

notifications@brooklinema.gov <notifications@brooklinema.gov>

Fri 9/18/2020 11:39 AM

To: Devon Williams <dwilliams@brooklinema.gov>

### Committee Reappointment Interest Form

Date	9/18/2020
Name	Marilyn Newman
Email:	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Committee you are a member of?	Economic Development Advisory Board (EDAB)
List of accomplishments in the last 3 years.	Assisted with analysis and refinement of numerous proposed warrant articles impacting commercial vibrancy and small businesses; served on River Road Study Committee which completed special district zoning to enable hotel and mixed used development in Emerald Island industrial area; assisted with planning and implementation of MAPC outreach process and visioning report that collected broad citizen input concerning future development issues in Brookline; assisted with EDAB comment on major redevelopment proposals (Waldo-Durgin, Holiday Inn, Welltower development at former Newbury College, 1299 Beacon, and numerous others.)
Future Goals	Continue to work with EDAB members and Town staff to promote and shape appropriate commercial and mixed-use development in a manner that supports Town fiscal, community planning, climate resilience, and racial equity objectives.
Questions? Please contact the Select Board at selectboard@brooklinema.gov, 617-730-2200	

Email not displaying correctly? [View it in your browser.](#)

OFFICE OF THE SELECT BOARD

MEMORANDUM

TO: Each Member of the Board

FROM: Melissa Goff, Deputy Town Administrator

**RE: Article 3**

DATE: 10/16/2020

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Attached please find the reports traditionally provided under article 3 which detail the status of capital projects and special appropriations broken out by those that are debt financed and those funded with current revenues.

Based on this report we are recommending rescinding the \$4M bond authorization voted in 2018 for the Driscoll School HVAC project. Now that there is a full reconstruction project and budget in place there is no need to retain this authorization.

The remainder of the report will help inform our continued discussion of funding available in the CIP.

**Recommended vote:**

VOTED: That the Town rescind the bond authorization for improvements to the Driscoll School, authorized as Item #70 of Section 13 of Article 7 of the 2018 Annual Town Meeting, in the amount of \$4,000,000.

Please let me know if you have any additional questions.

		Revised Budget	YTD Expended	YTD Encumbered	Available	Status
C192	FIRE ENGINE TOWER #1 REPLACEME	4,819	0	0	4,819	Suspension upgrade underway
C193	FLEET MAINT FACILITY & TRAINING	753	0	0	753	Soliciting quotes for exterior signage
	<b>FIRE CAPITAL</b>	5,572	0	0	5,572	
C199	ACQUISITION OF 111 CYPRESS ST	39,784	12,500	17,273	10,011	Ongoing
C175	ROOF REPAIRS AND REPLACEMENT	11,340	9,430	1,900	10	Complete
C185	COOLIDGE CORNER SCHOOL RENOVATION	7,009,606	9,029	66,958	6,933,618	Still ongoing - working on punchlist
C190	ROOF REPAIRS AND REPLACEMENT	293,681	5,631	0	288,050	Ongoing
C195	ENVELOPE FENESTRATION	770,282	0	250,290	519,992	Ongoing
C203	DRISCOLL SCHOOL REHABILITATION	4,000,000	0	0	4,000,000	Recommend bond recission -- new budget for renovation underway.
C204	BHS RENOVATION/EXPANSION	137,520,313	10,361,824	109,251,580	17,906,909	Ongoing, completion June/November 2021
C208	TOWN/SCH BLDG ENV/FENESTRATION	1,500,000	0	50,000	1,450,000	Ongoing
C209	PIERCE SCHOOL FEASIBILITY	1,991,044	3,985	0	1,987,059	Underway
C210	DRISCOLL SCHOOL RECONSTRUCTION	113,277,658	1,130,287	8,213,550	103,933,821	Underway
C214	TOWN/SCH BLDG ROOF REPAIR	3,100,000	0	0	3,100,000	Ongoing
	<b>BUILDING CAPITAL</b>	269,513,708	11,532,685	117,851,552	140,129,471	
C150	MUDDY RIVER RESTORATION	74,967	0	0	74,967	In process.
C157	NEWTON ST LANDFILL	3,379	0	3,000	379	Nearing Completion
C158	WASTEWATER SYSTEM IMP	199,620	33,755	81,608	84,257	In process.
C166	CARLTON ST FOOTBRIDGE RESTORAT	993,476	3,752	124,986	864,738	In process.
C169	STORM DRAIN IMPROVEMENTS	9,056	0	2,000	7,056	In process.
C170	WATER MAIN IMPROVEMENTS	5,076	0	0	5,076	In process.
C179	NEWTON ST LANDFILL CLOSE	321,449	145,540	108,887	67,022	In process.
C180	VILLAGE SQUARE IMPROVEMENTS	1,200,000	0	0	1,200,000	In process.
C181	SINGLETREE TANK IMPROVEMENTS	103,018	0	7,125	95,893	Nearing completion.
C182	SINGLETREE GATEHOUSE IMPROVEMENTS	27,556	8,312	16,816	2,428	Nearing Completion.
C187	WASTEWATER SYSTEM IMP	340,578	1,000	338,376	1,202	In process.
C194	COREY HILL PLAYGROUND	6,504	0	3	6,501	Nearing Close-out.
C196	WATER SYSTEM IMPROVEMENTS	159,460	25,270	94,080	40,110	In process.
C198	BROOKLINE RESERVOIR PARK	382,433	34,999	125,228	222,205	In process.
C200	WASTEWATER SYSTEM IMPROVEMENTS	2,959,500	0	4,500	2,955,000	In process.
C201	HARRY DOWNES FIELD/KRAFT FAM	360,856	49,243	310,878	734	Nearing project close-out.
C202	LARZ ANDERSON PARK	2,308,016	0	0	2,308,016	In process.
C206	WATER SYSTEM IMPROVEMENTS	1,864,023	130,969	0	1,733,054	In process.
C207	WASTE WATER SYSTEM IMPROVEMENT	3,000,000	0	0	3,000,000	In process.
C211	WATER SYSTEM IMPROVEMENTS	2,000,000	0	0	2,000,000	In process.
C212	WASTE WATER SYSTEM IMPROVEMENT	3,000,000	0	0	3,000,000	In process.
C213	LARZ ANDERSON PARK	2,200,000	0	0	2,200,000	In process.
	<b>DPW CAPITAL</b>	21,518,966	432,839	1,217,487	19,868,639	
C188	GOLF COURSE IMPROVEMENTS	748,914	0	0	748,914	For on-going work including drainage, bunkers, and cart paths.
	<b>RECREATION CAPITAL</b>	748,914	0	0	748,914	

# 10.A.

## Available Budget Report - Special Warrant Articles (Revenue-Financed) for Fiscal Year 2021 as of 9/14/20

<u>Account</u>	<u>Account Name</u>	<u>Revised Budget</u>	<u>YTD Expended</u>	<u>YTD Encumbered</u>	<u>Available Balance</u>	<u>Comment</u>
K017	TOWN FURNITURE UPGRADES	25,938	0	25,938	0	Ongoing town furniture replacement program.
K018	SCHOOL FURNITURE UPGRADES	17,246	2,694	0	14,552	Ongoing school furniture replacement program.
K042	CLASSROOM CAPACITY	1,644,831	889,911	157,793	597,127	
<b>Sub-Total Finance Dept</b>		<b>1,688,015</b>	<b>892,605</b>	<b>183,731</b>	<b>611,680</b>	
K122	RIVERWAY BIKE/PED PATH	40,000	0	0	40,000	Being Coordinated with USACE for Phase II Improvements.
K165	GATEWAY EAST CONSTRUCTION MATCH	227,620	227,620	0	0	
K158	ZONING BY-LAW RE-ORGANIZATION	194,644	0	1,339	193,305	Contract amended to modify scope and confirm that Town's obligations are satisfied in full
<b>Sub-Total Dept of Planning &amp; Community Development</b>		<b>462,264</b>	<b>227,620</b>	<b>1,339</b>	<b>233,305</b>	
K016	IT HARDWARE-SOFTWARE	9,875	0	5,250	4,625	Balance will be spent by end of year.
<b>Sub-Total Information Technology Dept</b>		<b>9,875</b>	<b>0</b>	<b>5,250</b>	<b>4,625</b>	
K159	CAD SYSTEM UPGRADE	29,866	0	27,622	2,244	Complete
K169	RADIO INFRASTRUCTURE	1,793,122	11,721	825,098	956,303	Ongoing project
<b>Sub-Total Police Dept</b>		<b>1,822,988</b>	<b>11,721</b>	<b>852,720</b>	<b>958,547</b>	
K095	FIRE ENGINE 6 REPLACEMENT	426	0	0	426	
K173	STATION 6 DRAFTING PIT	50,000	0	0	50,000	The BFD is currently in the process of soliciting updated bids for this project.
K175	FIRE STATION ALERTING SYSTEM	450,000	0	0	450,000	The BFD has identified a vendor and is awaiting an updted quote based on design meetings with FD and IT
<b>Sub-Total Fire Dept</b>		<b>500,426</b>	<b>0</b>	<b>0</b>	<b>500,426</b>	
K002	ENERGY CONSERVATION	195,452	66,900	120,160	8,392	Ongoing
K010	ENERGY MANAGEMENT SYSTEMS	145,060	14,524	92,544	37,992	Ongoing
K022	TOWN-SCHOOL SECURITY-LIFE SAFETY	218,142	71,297	27,280	119,565	Ongoing
K032	RESERVOIR GATEHOUSE				0	Complete
K038	PIERCE SCHOOL ELECTRICAL SYSTEM				0	Complete
K040	PUTTERHAM BATHROOM	149,650	7,554	102,518	39,578	Underway
K042	CLASSROOM CAPACITY EXPANSION (OLD ACCOUNT)	80,606	17,383	62,942	281	Complete
K046	TOWN HALL/MAIN LIBRARY GARAGE IMPROVEMENTS	288,200	0	0	288,200	On Hold pending final plan for Pierce School
K050	ADA RENOVATIONS	91,661	0	17,978	73,683	Ongoing
K098	FIRE STATION RENOVATIONS	1,275,530	1,071	81,919	1,192,540	On hold until final plan/funding is approved
K109	TOWN/SCHOOL BUILDINGS ELEVATOR	591,594	0	56,780	534,814	Ongoing
K121	GARAGE FLOOR SEALANTS	150,000	0	0	150,000	Ongoing
K123	DEVOTION HOUSE / PUTTERHAM SCHOOL	62,000	0	0	62,000	Ongoing
K128	COOLIDGE CORNER LIBRARY	17,666	7,830	0	9,836	Ongoing
K131	DRISCOLL SCHOOL HVAC	119,392	0	82,600	36,792	Complete
K145	TOWN/SCHOOL TRASH COMPACTORS	18,036	0	1,500	16,536	Ongoing
K148	TOWN REHAB/UPGRADE	60,000	0	0	60,000	Ongoing
K153	SCHOOL REHAB/UPGRADE	110,758	34,329	74,178	2,251	Ongoing
K154	9th SCHOOL FEAS/SCHEMATIC	183,937	340	16,985	166,612	Ongoing
K161	HVAC EQUIPMENT	100,000	0	0	100,000	Ongoing
K163	PUBLIC BUILDING FIRE ALARM UPGRADES	300,850	0	850	300,000	Ongoing
K168	DRISCOLL SCHOOL SCHEMATIC DESIGN	244,707	13,147	0	231,560	Underway
<b>Sub-Total Building Dept</b>		<b>4,403,241</b>	<b>234,374</b>	<b>738,233</b>	<b>3,430,634</b>	
K051	TREE MANAGEMENT	313,677	3,715	25,300	284,662	In Process
K052	BICYCLE ACCESS IMPROVEMENTS	162,780	445	124,655	37,680	In Process
K054	STREET LIGHTING REPLACEMENT	32,152	0	0	32,152	In Process
K055	CARLTON STREET FOOTBRIDGE	53,107	10,000	15,578	27,529	In Process
K056	SIDEWALK IMPROVEMENTS	734,089	334,092	19,423	380,574	In Process
K058	STREET REHABILITATION	5,652,396	358,021	2,379,644	2,914,731	In Process
K065	RIVERWAY PARK IMPROVEMENT	86,369	0	0	86,369	Coordination & Planning - Will Follow Phase II Muddy River
K066	PLAYGROUND,FENCE,FIELD, EQUIPMENT	528,250	53,799	288,775	185,676	In Process
K069	TENNIS/BASKETBALL COURT REHAB	393,385	0	0	393,385	In Process
K070	LARZ ANDERSON PARK	1,467,391	0	94,160	1,373,231	In Process
K073	TOWN-SCHOOL GROUNDS REHAB	271,908	25,567	168,892	77,449	In Process
K078	MUDDY RIVER REMEDIATION	1,317,495	0	444	1,317,052	In Process
K083	TRAFFIC CALMING	366,897	0	72,136	294,761	In Process
K088	MOUNTFORT ST TRAFFIC SIGNAL	76,438	0	0	76,438	Awaiting MassDOT St. Mary's Bridge Project Approval & Funding
K093	WATER METER REPLACEMENT	391,225	59,136	7,984	324,105	In Process
K096	PARKING METERS	225,769	0	186,719	39,050	In Process



# 10.A.

## Available Budget Report - Special Warrant Articles (Revenue-Financed) for Fiscal Year 2021 as of 9/14/20

<u>Account</u>	<u>Account Name</u>	<u>Revised Budget</u>	<u>YTD Expended</u>	<u>YTD Encumbered</u>	<u>Available Balance</u>	<u>Comment</u>
K097	LANDFILL SETTLEMENTS	133,193	0	2,460	130,733	In Process
K101	MUNICIPAL SERVICE CENTER REPAIRS	3,501	0	2,444	1,057	Nearing Close Out
K115	OLD BURIAL GROUNDS	94,377	0	0	94,377	In Process
K120	PARK COMFORT STATIONS	390,417	0	23,685	366,732	In Process
K124	WOODLAND RD / HAMMOND ST CROSSING STUDY	15,600	0	0	15,600	In Process
K125	BROOKLINE AVE PLAYGROUND	83,747	0	0	83,747	In Process
K129	MBTA TRAFFIC SIGNALIZATION	16,240	0	40	16,200	In Process
K137	EMERSON GARDEN PLAYGROUND	1,304	0	0	1,304	Nearing Close Out
K141	DEAN RD/CHESTNUT HILL AVE TRAF SIGNAL	260,000	0	0	260,000	In Process
K142	WINTHROP PATH REHABILITATION	65,000	0	0	65,000	In Process
K143	BROOKLINE RESERVOIR PARK	1,504	0	1,504	0	Complete
K150	DAVIS PATH FOOTBRIDGE	750,810	642,819	49,491	58,500	In Process
K151	MURPHY PLAYGROUND	65,000	229	0	64,771	In Process
K152	STORMWATER IMPROVEMENTS	387,908	0	0	387,908	In Process
K160	CYPRESS PLAYGROUND DESIGN	221,865	0	21,800	200,065	In Process
K164	NETHERLANDS ROUD FACILITY IMPROVEMENTS	662,096	6,723	318,290	337,083	In Process
K166	BROOKLINE RESERVOIR	55,027	0	55,027	0	Complete
K167	RIDE SHARE FUNDS	195,923	10,867	9,465	175,591	In Process
K170	FIRE ALARM CALL BOX	814,766	22,808	59,897	732,061	In Process
K171	ROBINSON PLAYGROUND	80,216	2,721	0	77,495	In Process
K174	CARLTON ST/MONMOUTH ST TRAF SIGNAL	333,663	0	333,663	0	In Process
<b>Sub-Total DPW</b>		<b>16,705,485</b>	<b>1,530,943</b>	<b>4,261,474</b>	<b>10,913,069</b>	
K140	LIBRARY INTERIOR PAINTING	14,469	0	0	14,469	Plan to expend the remainder this fall.
<b>Sub-Total Library</b>		<b>14,469</b>	<b>0</b>	<b>0</b>	<b>14,469</b>	
K106	SWIMMING POOL/SHOWERS/ REPOINTING	18,242	0	18,242	0	Complete
K106	POOL FILTER PROJECT	186,184	0	0	186,184	Still spending down, initial stage complete, RFP going on on phase 2 apprx. 10/15/2020
K172	ELIOT REC CTR RENOVAT	7,220	0	0	7,220	
<b>Sub-Total Recreation</b>		<b>211,646</b>	<b>0</b>	<b>18,242</b>	<b>193,404</b>	
<b>TOTAL</b>		<b>25,818,409</b>	<b>2,897,262</b>	<b>6,060,989</b>	<b>16,860,158</b>	

ARTICLE X

X ARTICLE

Submitted by: Select Board

To see if the Town will authorize the Comptroller to close out either all or a portion of the unexpended balances in certain Special Appropriations and return said sums to the Surplus Revenue accounts, and rescind the unused portion of prior borrowing authorizations, or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Section 2.1.4 of the Town's By-Laws requires that each Annual Town Meeting include a warrant article showing the status of all special appropriations. Due to the COVID-19 crisis the Select Board voted to pursue a limited warrant for the Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

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## 10.A.

November 17, 2020 Special Town Meeting

x-2

### SELECT BOARD'S RECOMMENDATION

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### ADVISORY COMMITTEE'S RECOMMENDATION

10.A.

November 17, 2020 Special Town Meeting

x-3

**XXX**

ARTICLE xX ARTICLE

Submitted by: Select Board

To see if the town will dedicate all or a percentage, which may not be less than 25 percent, of the host community agreement fees collected under Massachusetts General Laws Chapter 94G Section 3(d) to the Marijuana Mitigation Stabilization Fund established under Massachusetts General Laws Chapter 40, Section 5B, effective for fiscal year 2021 beginning on July 1, 2020, or take any other action relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis the Select Board voted to pursue a limited warrant for the 2020 Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

The Town has begun to appropriate host community payments to departmental budgets to address the costs imposed upon the town by the marijuana operations. The projected mitigation payments are anticipated to be in excess of these preliminary recommendations. As the Town develops more experience in this new industry there will be additional recommendations that can be addressed. Marijuana legislation allows the town to create a stabilization fund that provides a mechanism for the town to dedicate these payments to a special fund for later appropriation for particular purposes. The Board anticipates that the Cannabis Mitigation Advisory Committee would develop spending proposals for Town Meeting to consider.

SELECT BOARD'S RECOMMENDATION

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ADVISORY COMMITTEE'S RECOMMENDATION

## 10.A.

November 17, 2020 Special Town Meeting

x-2

10.A.

November 17, 2020 Special Town Meeting

5-3

**XXX**

ARTICLE 6SIXTH ARTICLE

Submitted by: Donelle O'Neal Sr., TMM4/AC

To see if the Town will adopt the following:

RESOLUTION PERTAINING TO THE ADOPTION OF AN IN-CAR VIDEO AND  
BODY WORN CAMERA POLICY FOR THE BROOKLINE POLICE DEPARTMENT.

WHEREAS, In-Car Video ("ICV") and Body Worn Cameras ("BWC") are considered to be effective law enforcement tools that reinforce the public's perception of police professionalism and preserve factual representations of officer-civilian interactions; and

WHEREAS, ICV and BWC may be useful in documenting crime and accident scenes or other events that include the confiscation and documentation of incidental evidence or contraband; and

WHEREAS, ICV and BWC are expected to enhance the Police Department's ability to document and review statements and events during the course of an incident, and preserve video and audio information and evidence for investigative and prosecutorial purposes; and

WHEREAS, although ICV and BWC recordings may provide only a limited perspective of encounters and incidents, and thus should be considered with all other available evidence, such as witnesses' statements, officer interviews, forensic analysis, and documentary evidence, studies have shown that ICV and BWC are a contributing factor in reducing complaints against police officers, increasing police accountability, and enhancing the public trust; and

WHEREAS, the policy of the Brookline Police Department is to respect the legitimate privacy interests of all persons in Brookline, while ensuring professionalism in its workforce, and therefore, Brookline Police Officers should only use ICV and BWC within the context of existing and applicable federal, state, and local laws, regulations, and the Department's rules and policies;

NOW THEREFORE, be it resolved, that Town Meeting requests the Select Board, along with the Town Administrator and Human Resources Director or their designees, to work promptly, constructively, and collaboratively with the appropriate members of the Brookline Police Department to adopt a policy pertaining to the use of ICV and BWC by Brookline Police Officers, and that the use of such equipment be implemented as soon as practicable. Be it further resolved that funding for the purchase, maintenance, and storage of ICV, BWC and recordings from such equipment be included in the Brookline Police Department Fiscal Year 2022 Budget.

Or act on anything relative thereto.



# 10.A.

November 17, 2020 Special Town Meeting

6-2

## PETITIONER’S ARTICLE DESCRIPTION

This is not just a local issue. This is part of the discussion on all three levels and is currently being addressed locally, statewide and nationally.

This Article calls for the expedient development and adoption of a policy pertaining to the use of In-Car Video and Body-Worn Cameras by Brookline Police Officers and the implementation of such equipment in the Brookline Police Department. The current tension in regards to Police and Citizen interactions across our nation makes it imperative that we “Boost Transparency” and Accountability within the Police Department.

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## SELECT BOARD’S RECOMMENDATION

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## ADVISORY COMMITTEE’S RECOMMENDATION

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**XXX**

ARTICLE xX ARTICLE

Submitted by: Land Bank Study Committee, Heather Hamilton, Chair

**Enable the Town to Accept the Community Preservation Act**

To see if the Town will enact the following:

The Town hereby accepts Sections 3 to 7, inclusive, of Chapter 44B of the General Laws, otherwise known as the Massachusetts Community Preservation Act, by approving a surcharge on real property for the purposes permitted by said Act, including the acquisition, creation and preservation of open space, the acquisition, preservation, rehabilitation and restoration of historic resources, the acquisition, creation, preservation, rehabilitation and restoration of land for recreational use, the acquisition, creation, preservation and support of community housing, and the rehabilitation and restoration of such open space and community housing that is acquired or created as provided under said Act; that the amount of such surcharge on real property shall be 1.0% of the annual real estate tax levy against real property commencing in fiscal year 2022; and that the Town hereby accepts the following exemption from such surcharge permitted under Section 3(e) of said Act: property owned and occupied as a domicile by any person who would qualify for low income housing or low or moderate income senior housing in the Town, as defined in Section 2 of said Act.

Or act on anything thereto.

PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the 2020 Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

Community Preservation Act (MGL Ch 44b) Summary

The Massachusetts Community Preservation Act (CPA), MGL Chapter 44B, was approved on September 14, 2000. The CPA allows communities to spend money for:

- Acquisition, creation and preservation of open space;
- Acquisition, preservation, rehabilitation and restoration of historic resources;
- Acquisition, creation and preservation of land for recreational use;
- Creation, preservation and support of community housing;
- Rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created with CPA funds.

The acceptance of the CPA by Town Meeting and the subsequent acceptance by the town's registered voters of a ballot question are the prerequisites to the CPA taking effect. The CPA allows a community the discretion to enact a surcharge of not more than 3% of the annual real estate tax levy. The amount of the surcharge on the real estate tax levy is not included in the calculation of total taxes assessed for purposes of determining the Proposition 2½ limit.

The CPA exempts from the property tax surcharge those taxpayers receiving an exemption authorized by M.G.L. c. 59 or any other law, such as, charitable institutions, the Commonwealth, cities and towns, certain classes of qualified elderly, widows and veterans, etc. (These are statutory exemptions.)

The statute allows a town to include optional exemptions of \$100,000 for each residential property, an exemption for owner-occupants who would qualify for low income housing (80% of area median income) or low and moderate-income senior housing (80% or 100% of area median income). If a town chooses to do so, a town may also exempt class three, commercial, and class four, industrial taxpayers in those cities or towns with classified tax rates, with or without a \$100,000 exemption.

Under the terms of the CPA statute the Select Board must appoint a Community Preservation Committee (CPC). The statute charges this committee with evaluating proposals and recommending CPA spending to Town Meeting. The statute requires that Town Meeting appropriate, or set aside for later spending, not less than 10% of the annual CPA revenues in the Community Preservation Funds (CPF) for each of the three categories: Open space/recreation land, historic preservation, and affordable housing. The remaining 70%, less up to 5% appropriated for administration, may be distributed beyond the required 10% among these three CPA categories, in accordance with the recommendations of the CPC and the approval of Town Meeting. Up to 5% of the annual revenues can be used for administrative expenses related to carrying out the community preservation program. CPA funds may be used as the local match for other grants that would fund CPA eligible projects

Upon the acceptance of the CPA, a town must establish a CPC composed of not less than five members from designated town boards (conservation commission, historical commission, parks and recreation commission, housing authority, and planning board) and up to four additional members selected through procedures to be established by the town. The CPC recommends annually to Town Meeting for approval of the various eligible projects or properties for which the CPF funds are to be expended. The CPA requires the CPC to consult with the various boards and commissions in order to determine what recommendations to make during the year. The CPC may make recommendations to Town Meeting for expenditure of funds for the purposes designated in the CPA. The Legislature amended the CPA, effective April 7, 2005, to allow a city or town to appropriate money in any year from the CPF to an affordable housing trust fund (AHTF). If Town Meeting rejects the CPC recommendation for distribution of funds for a particular project, the unspent funds go back into the CPF. One of the principal guidelines set out in the CPA for the spending of funds is that the funds cannot be used to replace existing operating funds but only to augment them. The Department of Revenue has interpreted this guideline as prohibiting the use of CPA funds to supplant operating funds that already have been appropriated.

In addition to the funds raised through the application of the surcharge, the town will receive funds from the Massachusetts Community Preservation Trust Fund distributed in three stages: matching, equity, and surplus. The principal stage is the first-round matching distribution in which the town will receive an amount not less than 5% and not more than 100% to match the funds raised by the town through the surcharge. The funds received from the State are derived from the surcharge fee added onto all document recording fees (except for the filing of declarations of homestead) at the county registry of deeds in which the community accepting the CPA is located. The amount of the funds distributed annually by the State to the town is based upon the amount which the town has raised annually through June 30 of each fiscal year as a result of the town's surcharge and certified to the State. (When, as happened this last year, Massachusetts ends with a surplus, the Commonwealth may allocate some of this surplus to the CPA Trust Fund. For the 2020 distribution, for example, the Commonwealth added \$20 million to the amount raised from recording fees.)

A community that accepts the CPA may revoke its acceptance any time after five years of its acceptance by the same manner in which the CPA was accepted. During the five years, if the community wishes to amend the amount of the surcharge or change the exemptions, they must do so by the same process by which the CPA was accepted. The surcharge, in the five-year period, however, may be reduced by the community to an amount that is greater than zero, e.g., 0.01%.

#### Community Preservation Act exemptions

The Community Preservation Act mandates certain statutory exemptions, as follows:

Chart 1: Typical Number of Statutory Exemptions Granted in Brookline

Description	Ch.59, Sec.5 Clause	FY2017 #Granted
Surviving Spouse	17D	5
Veteran (10% Disability)	22	46
Veteran (loss of one hand, foot or eye)	22A	0
Veteran (loss of two hands, feet or eyes)	22B	0
Veteran (special housing)	22C	0
Veteran (certain widows of soldiers)	22D	0
Veteran (100% disability, cannot work)	22E	10
Blind	37A	37
Elderly	41C	11

The CPA also allows additional discretionary exemptions as explained in the summary, above. The Land Bank Study Committee, the petitioner, voted to recommend in this article exemptions for owner-occupants who would qualify for low income housing (80% of area median income) or low and moderate-income senior housing (80% or 100% of area median income).

## DISCUSSION

The Brookline Housing Authority needs substantial amounts of money for new housing. A balanced additional affordable housing approach should also be providing more funds for open space, parks and playgrounds. With many significant historic structures in Town, historic preservation and possibly adaptive re-use of historic structures is an important goal to many Brookline residents. Adopting the Community Preservation Act, by providing a dedicated source of funds for these purposes, may free up money in the town budget for other priorities.

Brookline faces difficult budget choices over the next five years, which will almost certainly mean requests for further overrides and debt exclusions. Additional overrides and debt exclusions impose a particular hardship on low-income residents, who are already struggling to pay taxes rising at rates well above 2.5% due to overrides and debt exclusions already in the pipeline.

Unlike an override, the CPA surcharge on Tax Bills is structured in such a way that low/moderate-income households are entitled to apply for exemption from the surcharge. Also, CPA revenue is matched by the state's Community Preservation Trust Fund, which for the current fiscal year is expected to be at a rate of 31%. Money for the CPA state match comes from fees and taxes paid by residents and business firms in every city and town, including Brookline. Brookline currently gets nothing back from the funds (\$162,560 in 2019) deposited in the CPA Trust Fund, but would if Brookline adopts the CPA.

Boston, Cambridge, and Newton are among 176 municipalities that have adopted the CPA. Adopters include one-half the municipalities in Massachusetts but well over one-half of taxpayers either by number or by state and local taxes paid.

In order to estimate the revenue from the CPA surcharge, adjustments must be made to take into account the financial impact of the allowed exemptions. This involves estimating the number of residents who are granted exemptions. Chart 1 lists the number of statutory exemptions granted in Brookline in a typical year. Eligibility for the low/moderate-income exemptions, on the other hand, is a function of household size, household income, and the area median income (AMI) threshold that applies for each household, either 80% of AMI or 100% of AMI. The number of eligible households, among Brookline's approximately 12,500 owner occupied households cannot be readily determined from available information. If this number were known, an estimate of the number of potentially eligible households, and the number who would actually apply and be granted an exemption, would help to reduce uncertainty regarding the financial impact of the low-income exemptions. But due to the lack of this required information such a method is neither preferable nor feasible.

Therefore, rather than relying on such a method, instead, Chart 2 shows a projection based on Massachusetts Department of Revenue data for communities that only allow the statutory exemption, and for communities that offer, in addition, the low/moderate-income exemptions (Chart 4). Based on these data for 11 communities offering the low/moderate-income exemptions, the median shrinkage due this exemption is 0.68%. For Brookline, this 0.68% projected shrinkage in CPA revenue would be \$15,940. Adding to this projection to the \$11,720

median experience for 19 communities with statutory exemptions only, the shrinkage contemplated by this warrant article would total 1.88% or \$27,660. This amount, subtracted from the proposed surcharge, and then including an estimated 31% state match, results in estimated net CPA revenue of \$3,034,536.

Chart 3 estimates the impact of the CPA surcharge, with the statutory and low/moderate-income exemptions on various property classes, with and without the residential exemption. (The chart also indicates the possible impact of the further \$100,000 assessed value exemption allowed by the CPA, but this is for information purposes only because this exemption is not contemplated for this article.)

Chart 4 shows of data for CPA participating communities that offer no exemptions beyond the statutory and communities that offer both the statutory and the low/moderate-income exemptions. The median for the 11 communities that offer low/moderate-income exemptions is 1.18% and the median for the 19 communities that offer no exemptions beyond statutory is 0.50%. (The difference, 0.68% (1.18 – 0.50 ), would be an estimate of the change in the shrinkage due to the additional low/moderate-income exemptions.)

Chart 5 lists CPA experience for a number of neighboring communities.

**Chart 2: Projected Revenue for Brookline from a 1% CPA Surcharge**

Based on the FY20 Levy and anticipated state match.	1% Surcharge with statutory exemptions only	1% Surcharge with statutory & low- income exemptions (recommended)
FY20 Total Tax Levy on Real Property	\$234,410,004	\$234,410,004
Proposed 1% CPA Surcharge	\$2,344,100	\$2,344,100
Shrinkage due to Statutory Exemptions, Abatements, Senior work-off (estimated at 0.50% based on experience of 19 towns with no other exemptions)	\$11,720	\$11,720
Shrinkage due to Low/Moderate Income Exemptions (estimated at 0.68% based on experience of 11 additional towns with the low/moderate- income exemptions but no other except for those above)		\$15,940

Estimated reduction in revenue due to exemptions (estimated at 1.18% for combined statutory and low/moderate-income)	\$11,720	\$27,660
Net Funds from Surcharge	\$2,332,380	\$2,316,440
State Match at 31%	\$723,038	\$718,096
Estimate of CPA funds available	\$3,055,417	\$3,034,536

**Chart 3: Impact of the Proposed 1% CPA Surcharge on Tax Bills in Brookline**

With and without a first \$100,000 of value exemption.	Median Value SF Home with Residential Exemption	Median Value Condo with Residential Exemption	Median Value SF & Condo with Residential Exemption	Median Value 2 Family with Residential Exemption	Median Value 3 Family with Residential Exemption
FY20 Assessed Value	\$1,719,250	\$747,300	\$911,600	\$1,818,700	\$1,918,000
<b>Less Residential Exemption</b>	\$292,060	\$292,060	\$292,060	\$292,060	\$292,060
Equals Taxable Value	\$1,427,190	\$445,240	\$619,540	\$1,526,640	\$1,625,940
Times Tax Rate	0.945%	0.945%	0.945%	0.945%	0.945%
Equals Tax Bill	\$13,487	\$4,302	\$5,855	\$14,427	\$15,365
RE Tax as% of Ass. Value	0.784%	0.576%	0.642%	0.793%	0.801%
1% CPA Surcharge	\$135	\$43	\$59	\$144	\$154
	\$9.45	\$9.45	\$9.45	\$9.45	\$9.45
Surcharge w. 100K Exemption	\$125	\$34	\$49	\$135	\$144
RE Tax+ CPA SC as % of Ass. Val.	0.792%	0.580%	0.648%	0.801%	0.809%
Change due to CPA surcharge	0.007%	0.004%	0.005%	0.007%	0.008%
	Median Value SF Home without Residential Exemption	Median Value Condo without Residential Exemption	Median Value SF & Condo no Residential Exemption	Median Value 2 Family without Residential Exemption	Median Value 3 Family without Residential Exemption.
FY20 Assessed Value	\$1,719,250	747,300	\$911,600	\$1,818,700	\$1,918,000
Times Tax Rate	0.945%	0.945%	0.945%	0.945%	0.945%
Equals Tax Bill	\$16,247	\$7,062	\$8,615	\$17,187	\$18,125
Tax Bill as% of Ass. Value	0.945%	0.945%	0.945%	0.945%	0.945%
1% CPA Surcharge	\$162	\$71	\$86	\$172	\$181
Less Value of 100K exemption	\$9.45	\$9.45	\$9.45	\$9.45	\$9.45
Surcharge w. 100K Exemption	\$153	\$61	\$77	\$162	\$172
RE Tax+ CPA SC as% of Ass. Val.	0.954%	0.953%	0.953%	0.954%	0.954%
Change due to surcharge	0.009%	0.008%	0.008%	0.009%	0.009%
	Median Value Small Apt. Bldg w.o. Res. Ex.	Median Value Large Apt. Bldg w.o. Res. Ex.	Median Assessed Value Per unit, Small Apt. Bldg (4 units)	Median Assessed Value Per unit, Large Apt. Bldg (20 units)	
FY20 Assessed Value	\$2,822,600	\$7,416,650	\$526,663	\$350,692	
<b>Times Tax Rate</b>	0.945%	0.945%	0.945%	0.945%	
Equals Tax Bill	\$26,674	\$70,087	\$4,977	\$3,314	
RE Tax as% of Ass. Value	0.945%	0.945%	0.945%	0.945%	
1% CPA Surcharge	\$267	\$701	\$50	\$33	
Less Value of 100K exemption	\$9.45	\$9.45	\$2.36	\$0.47	
Surcharge w. 100K Exemption	\$257	\$691	\$47	\$33	
RE Tax+ CPA SC as % of Ass. Val.	0.954%	0.954%	0.954%	0.954%	
Change due to surcharge	0.009%	0.009%	0.009%	0.009%	



**Chart 4: Data on Municipalities that have adopted the CPA with the low income or with no exemptions beyond those required by statute (data for FY19)**

	Real Property Tax Levy	Surcharge Rate	Exemptions (beyond statutory)	Surcharge with no Exemptions	Surcharge Raised	Shrinkage due to Exemptions	% Shrinkage
Agawam	53,276,820	1.00%	low income	532,768	529,429	3,339	0.63%
Ayer	19,093,589	1.00%	low income	190,936	189,916	1,020	0.53%
Boxborough	18,490,234	1.00%	low income	184,902	183,464	1,438	0.78%
Dracut	48,746,712	2.00%	low income	974,934	964,944	9,990	1.02%
Dunstable	9,168,977	3.00%	low income	275,069	274,408	661	0.24%
Goshen	2,311,789	3.00%	low income	69,354	68,535	819	1.18%
Hull	28,876,173	1.50%	low income	433,143	428,027	5,116	1.18%
Millis	21,961,654	1.00%	low income	219,617	163,954	55,663	25.35%
Rehoboth	23,833,271	1.00%	low income	238,333	233,720	4,613	1.94%
Rowley	15,397,843	3.00%	low income	461,935	455,101	6,834	1.48%
Watertown	105,860,455	2.00%	low income	2,117,209	2,085,274	31,935	1.51%
						<b>Median</b>	<b>1.18%</b>
Barnstable	120,431,812	3.00%	none	3,612,954	3,596,331	16,623	0.46%
Bourne	48,504,661	3.00%	none	1,455,140	1,445,843	9,297	0.64%
Brewster	33,406,663	3.00%	none	1,002,200	997,502	4,698	0.47%
Dennis	43,026,351	3.00%	none	1,290,791	1,287,571	3,220	0.25%
Eastham	24,083,901	3.00%	none	722,517	719,164	3,353	0.46%
Falmouth	101,117,566	3.00%	none	3,033,527	3,010,745	22,782	0.75%
Harvard	21,084,669	1.10%	none	231,931	231,935	-4	0.00%
Harwich	48,466,005	3.00%	none	1,453,980	1,445,653	8,327	0.57%
Hudson	51,768,015	1.00%	none	517,680	515,080	2,600	0.50%
Mashpee	47,340,155	3.00%	none	1,420,205	1,412,734	7,471	0.53%
Newton	337,781,126	1.00%	none	3,377,811	3,381,289	-3,478	-0.10%
Orleans	29,859,176	3.00%	none	895,775	893,294	2,481	0.28%
Peabody	105,219,469	1.00%	none	1,052,195	883,904	168,291	15.99%
Plymouth	168,793,464	1.50%	none	2,531,902	2,519,026	12,876	0.51%
Sandwich	58,752,307	3.00%	none	1,762,569	1,755,347	7,222	0.41%
Truro	16,097,655	3.00%	none	482,930	479,830	3,100	0.64%
Wellfleet	17,549,368	3.00%	none	526,481	525,614	867	0.16%
Westport	27,744,626	2.00%	none	554,893	551,830	3,063	0.55%
Yarmouth	59,444,529	3.00%	none	1,783,336	1,767,530	15,806	0.89%
						<b>Median</b>	<b>0.50%</b>

Source: Massachusetts Department of Revenue, Municipal Data

**Chart 5: Data on Neighboring Municipalities that have Adopted the Community Preservation Act (data for FY19)**

	Real Property Tax Levy	Surcharge Rate	Exemptions (See key below)	Surcharge with no Exemptions	Surcharge Raised	Shrinkage due to Exemptions	% Shrinkage
Newton	337,781,126	1.00%	A	3,377,811	3,381,219	-3,408	-0.10%
Watertown*	105,860,455	2.00%	B	2,117,209	2,085,274	31,935	1.51%
Wellesley	139,638,307	1.00%	C	1,396,383	1,299,725	96,658	6.92%
Belmont	91,315,374	1.50%	C	1,369,731	1,213,313	156,418	11.42%
Cambridge*	387,938,476	3.00%	C	11,638,154	11,319,727	318,427	2.74%
Concord	387,938,476	1.50%	C	5,819,077	1,232,570	4,586,507	78.82%
Lexington	387,938,476	3.00%	C	11,638,154	4,911,223	6,726,931	57.80%
Needham	387,938,476	2.00%	C	7,758,770	2,476,655	5,282,115	68.08%
Arlington	122,677,165	1.50%	D	1,840,157	1,565,229	274,928	14.94%
Boston*	2,183,812,102	1.00%	D	21,838,121	20,218,071	1,620,050	7.42%
Waltham*	169,964,212	2.00%	D	3,399,284	3,010,831	388,453	11.43%

A: No exemptions beyond those required of all CPA communities

B: Low income

C: Low income, first \$100,000 residential

D: Low income, first \$100,000 residential, first \$100,000 commercial

\*Among 15 Massachusetts municipalities that have adopted the residential exemption

Source: Massachusetts Department of Revenue, Municipal Data

### Accomplishments among 176 CPA communities

Town Meeting members may be interested in browsing a sitewide database of hundreds of completed CPA funded projects arranged alphabetically by town. (Source: The Community Preservation Coalition)

<https://www.communitypreservation.org/databank/projectsdatabase/access>

### Fiscal impact on Town department expenses

The CPA allows the Town to appropriate up to 5% of CPA revenue for administration, which would be approximately \$150,000, to defray Town expenses. The impact is likely to fall on certain departments, specifically to provide support for the Community Preservation Act Committee processing of project applications, awards, and monitoring. The assessor processes eligibility for exemption applications and tax bill adjustments.

## 10.A.

May 19, 2020 Annual Town Meeting

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Chart 6 shows demographic characteristics of Arlington, Watertown, and Brookline, the CPA Surcharge Rate and the number of CPA low-income exemptions for the former two, and whether these municipalities have a residential exemption. Arlington has between 90 and 100 applications for the CPA low-income exemption and Watertown has 87.

Based on the experience of these two fairly comparable municipalities, we might expect Brookline to have between 100 and 150 applications for the low-income exemption. The number could, of course, be much higher, or it could be lower for Brookline.

Chart 6:

**Data for Arlington, Watertown, and Brookline on Demographics and the number of Low-Income exemptions from the CPA Surcharge**

	Arlington	Watertown	Brookline
Number of Owner-Occupied Housing Units	11,349	7,910	12,574
Median Household Income of Owner-Occ. HH's	\$136,998	\$112,067	\$148,631
% of Own.Occ. HH's for which Housing costs exceed 30% of Income	24%	31%	27%
CPA Surcharge Rate	2.00%	1.50%	1.00%*
Number of low-income exemption applications	90-100	87	
as % of Own.Occ. HH's	0.84%	1.20%	
Residential Exemption	No	Yes	Yes

\*CPA Surcharge Proposed for Brookline

(Source of Demographic Data: U.S. Bureau of the Census, American Fact Finder, Community Facts. Data are for the average of five years 2013-2017, with Income adjusted to 2017 dollars.

Staff from Planning and Community Development and Finance have reviewed this proposed article. Here is an estimate of resources needed for support.

Chart 7: Estimate for the CPA administration budget

CPA Administration					
POSITION	GRADE	# OF POSITIONS	SALARY	TOTAL SALARY	
Planner	T-6	1	68,886	68,886	
Office Assistant	C-5	0.50	47,440	23,404	18.5 hrs/wk
<i>PERSONNEL SUB-TOTAL</i>		<i>1.5</i>		<i>92,289</i>	
Fringe				32,301	Assumes 35% fringe
Advertising				5,000	
Supplies				2,000	
Dues				8,000	
<i>NON- PERSONNEL SUB-TOTAL</i>				<i>15,000</i>	
<b>TOTAL</b>				<b>139,591</b>	

Given the limited time for review, staff estimates were based on previous experience working in CPA communities and knowledge of existing staffing in CPA communities. We did not include existing staff support, but only new resources that would be needed to manage this new program. Knowing how process-orientated Brookline is, the staffing estimate may be lower than what is actually needed (especially if the CPA committee and the AC review project recommendations). The Assessing staff believe if the exemptions are in the 100-150 range that it could be managed with existing resources, but depending on the requirements of the exemption and volume it could require more staff. It also may not be realistic to rely on a tax work off volunteer given the sensitive nature of the material needed to verify exemptions.

Obviously, the more spent on administration, the less for grants. On the other hand, when the Town budget is stressed, the CPA does allow the Town to recover at least 5% for overhead.

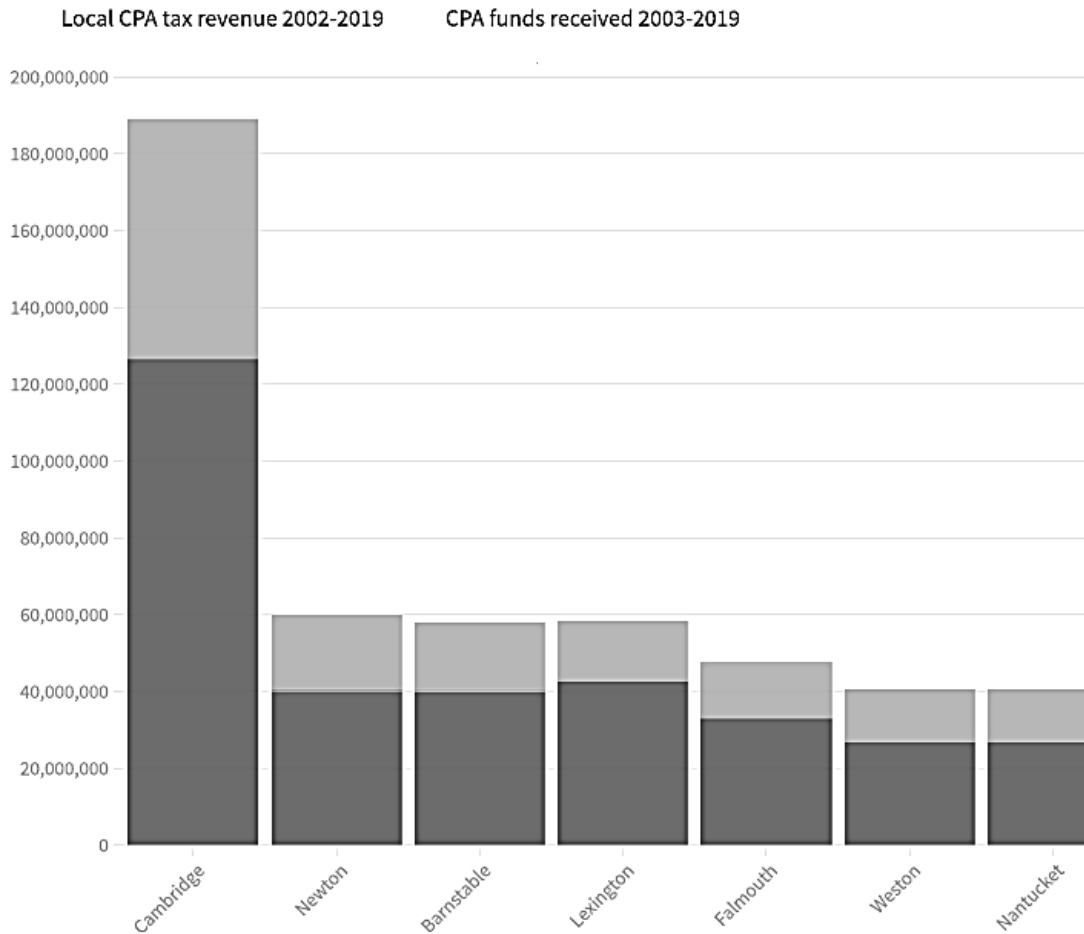
May 19, 2020 Annual Town Meeting

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Chart 8:

**CPA Top 10 Communities**

Municipalities to receive the most CPA funds since it started



\*\* Top of bar (smaller): CPA matching funds received 2002 - 2019

\*\*\* Bottom of bar (larger): Local CPA Revenue 2002 – 2019

May 19, 2020 Annual Town Meeting

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# Community Preservation Act Adoption November 2019



10.A.

May 19, 2020 Annual Town Meeting

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**NORFOLK COUNTY REGISTRY OF DEEDS**  
**COMMUNITY PRESERVATION ACT (CPA)**  
**SURCHARGES BY TOWN FOR CALENDAR YEAR 2019**

TOWN	TOTAL
AVON	\$19,945
BELLINGHAM	\$74,615
BRAINTREE	\$143,415
BROOKLINE	\$162,560
CANTON	\$92,585
COHASSET	\$43,625
DEDHAM	\$95,680
DOVER	\$25,515
FOXBOROUGH	\$60,995
FRANKLIN	\$126,230
HOLBROOK	\$45,280
MEDFIELD	\$52,215
MEDWAY	\$52,215
MILLIS	\$35,195
MILTON	\$95,750
NEEDHAM	\$116,460
NORFOLK	\$42,300
NORWOOD	\$91,890
PLAINVILLE	- \$30,505
QUINCY	\$257,605
RANDOLPH	\$104,350
SHARON	\$60,715
STOUGHTON	\$105,130
WALPOLE	\$98,430
WELLESLEY	\$93,550
WESTWOOD	\$61,725
WEYMOUTH	\$205,230
WRENTHAM	\$52,960



## 10.A.

May 19, 2020 Annual Town Meeting

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### SELECT BOARD'S RECOMMENDATION

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### ADVISORY COMMITTEE'S RECOMMENDATION

**XXX**



## Building a Better Brookline

**Economic Development  
Advisory Board**  
333 Washington Street  
Brookline, MA 02445  
617-730-2468

Robert Sperber, Founder  
Emeritus

Anne R. Meyers, Co-Chair  
Paul Saner, Co-Chair  
Cliff Brown  
Derrick Choi  
Alan Christ  
Susan Houston  
Kenneth Lewis  
Carol Levin  
Thomas Nally  
Marilyn Newman  
Alden Raine  
Donald A. Warner

October 6, 2020

### **RE: Article 14 – Tobacco**

Dear Select Board and Advisory Committee,

During our October 5<sup>th</sup> meeting, the Economic Development Advisory Board (EDAB) voted to recommend “no action” regarding Warrant Article 14 (6-2-0).

This article is a citizen-petitioned warrant article, with Anthony Ishak as the main point of contact. Over the last nine years, Brookline has voted to steadily increase regulations and restrictions to reduce the negative impacts of tobacco. In Spring of 2016, in response to a citizen-petitioned warrant article to ban the sale or distribution of tobacco, EDAB, the Select Board, Advisory Committee, and ultimately Town Meeting voted to refer the article to a Select Board study committee. Following a year of conversation with tobacco license holders participating on that committee, an article passed Town Meeting a year later that phases out tobacco licenses. Since that time, housing development permits have been approved for the sites of two businesses with tobacco licenses.

In 2019, Town Meeting also banned flavored tobacco, which was surprising to the existing businesses as several of them gave testimony at Town Meeting about how their businesses would be significantly harmed. Following that vote, a license holder immediately closed.

Materials reviewed by EDAB included the September 29, 2020 memo from First Assistant Town Counsel (<https://www.brooklinema.gov/DocumentCenter/View/22586>) as well as an October 1, 2020 letter from the Brookline Chamber of Commerce (<https://www.brooklinema.gov/DocumentCenter/View/22655>). Additionally, Mr. Ishak clarified that the petitioners were no longer seeking a cap to the size of an establishment that can sell tobacco products. The Human Services Subcommittee of the Advisory Committee also asked the petitioner to seek advice from EDAB on the following questions:

1. The three strikes language is unclear. Do these strikes accumulate over the entire life of business? Would these strikes count against the new owner if the business is sold?
2. The WA’s impact on the transferability of a tobacco license is unclear.
3. The age restriction seems arbitrary. Targeting adult smokers is a real departure from traditional tobacco use reduction strategies that have focused on preventing younger demographics from starting smoking.
4. Concerned about the lack of feedback from the business community on the potential impact of this article.

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During the discussion of this warrant article, EDAB members confirmed that the petitioners had not sought any feedback from the business community. Economic Development staff did notify businesses with existing licenses, one of which noted that they did not believe their voice would be heard or taken into account during the Town Meeting process.

EDAB members clarified that the petitioner's comparison of having a "three strikes" policy regarding infractions, while more common with state professional licenses or drivers' licenses, the petitioner did not look at how the Town issues sanctions at a local licensing level such as alcohol or marijuana. Economic Development Director Brewton suggested that the petitioner consider moving any sanction language to a regulation, rather than within the bylaw, similar to the licensing of restaurants that serve alcohol on premises. This language includes the requirement to discuss the severity and past history of infractions as well as making a finding following a hearing or reasonable opportunity with the business.

EDAB did not take up items 2 and 3 above, primarily due to the lack of the petitioners' outreach to existing license holders.

Sincerely,

Anne Meyers & Paul Saner, EDAB Co-Chairs

cc: Dr. Swannie Jett, Director of Health & Human Services  
Brookline Chamber of Commerce  
Coolidge Corner Merchants Association  
Brookline Village Business Association

ARTICLE xX ARTICLE

Submitted by: Anthony Ishak, Kate Silbaugh TMM1, Maura Toomey TMM8, Nancy Daly TMM12

To see if the Town will amend Article 8.23 of the Town's General By-laws ("Tobacco Control") as follows (language to be omitted appearing in ~~strike through~~; language to be added appearing in **bold underline**):

**ARTICLE 8.23  
TOBACCO CONTROL**

SECTION 8.23.1 - PURPOSE

In order to protect the health, safety and welfare of the inhabitants of the Town of Brookline, this by-law shall limit and restrict the sale of and public exposure to tobacco products within the Town of Brookline.

SECTION 8.23.2 - DEFINITIONS

a. Blunt Wrap - Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

b. Characterizing flavor - A distinguishable taste or aroma, other than the taste or aroma of a tobacco product or component part thereof including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, menthol, mint, wintergreen, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

c. Cigar- Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or

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without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

d. Component part - Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

e. Constituent - Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

f. Distinguishable - Perceivable by either the sense of smell or taste.

g. E-Cigarette - Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery, and/or electronic circuits that provides a vapor of liquid flavored or unflavored nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, hookah pens, electronic hookah, e-hookah, hookah sticks, personal vaporizers, mechanical mods, vape pens, vaping devices, or under any other product name. "E-Cigarette" includes any component or part of an e-cigarette.

h. Educational Institution - any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

i. Employee - An individual who performs services for an employer.

j. Employer - An individual, partnership, association, corporation, trust or other organized group of individuals that utilizes the services of one (1) or more employees.

k. Entity - any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

l. Flavored tobacco product - Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor (including but not limited to menthol, mint, and wintergreen). A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

m. Food Service Establishment - An establishment having one or more seats at which food is served to the public.

n. Health Care Institution - An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Health under M.G.L. c. 112. Health care institution includes hospitals, clinics, health centers, pharmacies, drug stores and doctors' and dentists' offices.

o. Minor - A person under twenty-one years of age.

p. Retail Establishment - any store that sells goods or articles of personal services to the public.

q. Retail tobacco store- An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco and/or e-cigarette products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Brookline Board of Health.

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r. Self-Service Display - Any display from which customers may select a tobacco or e-cigarette products without assistance from an employee or store personnel.

s. Smoke Constituent - Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

t. Smoking - Lighting of, or having in one's possession any lighted cigarette, cigar, pipe or other tobacco product or non-tobacco product designed to be combusted and inhaled. The activation of or inhalation of vapor from an e-cigarette shall be considered smoking under this by-law.

u. Tobacco - Any product containing, made, or derived from tobacco that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco or snuff. "Tobacco" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

v. Tobacco Product- Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

w. Tobacco Vending Machine - A mechanical or electrical device which dispenses tobacco or e-cigarette products by self-service, with or without assistance by a clerk or operator.

x. Workplace - An indoor area, structure or facility or a portion thereof, at which one or more employees perform a service for compensation for the employer, other enclosed spaces rented to or otherwise used by the public; where the employer has the right or authority to exercise control over the space.

#### SECTION 8.23.3 - REGULATED CONDUCT

##### a. Public Places

(1) To the extent that the following are not covered by applicable State laws or regulations, no person shall smoke in any rooms or interior areas in which the public is permitted. This includes, but is not limited to, any food service establishment, health care institution, classroom, lecture hall, museum, motion picture theater, school, day care facility, reception area, waiting room, restroom or lavatory, retail store, bank (including ATMs), hair salons or barber shops and meetings of government agencies open to the public.

(2) Taxi/Livery services licensed by the Town of Brookline shall be provided in smoke-free vehicles. The restriction of smoking in taxi/livery vehicles applies to drivers as well as passengers. Vehicles shall be posted in such a manner that their smoke-free status can be readily determined from the outside of the vehicle.

(3) Licensed Inns, Hotels, Motels and Lodging Houses in the Town of Brookline must provide smoke-free common areas. Licensed Inns, Hotels and Motels in the Town of Brookline must designate 100% of individual dwelling units or rooms as non-smoking.

(4) The use of tobacco or e-cigarette products by minors or school personnel is prohibited in or upon any public sidewalk or other public property located within four hundred (400) feet of Brookline High School grounds. The Commissioner of Public Works shall erect and maintain



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signage identifying the locations where smoking is prohibited under this paragraph (4). Such signage shall be erected so as to notify the public of the smoking prohibition and the areas affected thereby.

b. Workplaces

(1) Smoking in workplaces is prohibited.

(2) Notwithstanding subsection (1), smoking may be permitted in private residences; except during such time when the residence is utilized as part of a business as a group childcare center, school age child care center, school age day or overnight camp, or a facility licensed by the department of early education and care or as a health care related office or facility.

(3) Every establishment in which smoking is permitted pursuant to this by-law shall designate all positions where the employee's presence in an area in which smoking is permitted to be "smoking positions." The establishment shall notify every applicant for employment in a smoking position, in writing, that the position may cause continuous exposure to secondhand smoke, which may be hazardous to the employee's health.

(4) No establishment in which smoking is permitted pursuant to this by-law may require any employee whose effective date of employment was on or before November 1, 1994 to accept a designated smoking position as a condition of continued employment by the employer.

(5) No establishment in which smoking is permitted pursuant to this by-law may discharge, refuse to hire, or otherwise discriminate against any employee or applicant for employment by reason of such person's unwillingness to be subjected to secondhand smoke exposure unless the employee has been hired for a designated smoking position and has been so notified in writing at the time of hiring.

(6) It is the intent of this by-law that a designated smoking position shall not be considered suitable for work for purposes of M.G.L. c. 151A, and that an employee who is required to work in a smoking position shall have good cause attributable to the employer for leaving work. c. E-cigarette Usage - Locations Prohibited (1) In addition to

the smoking prohibitions set forth in this bylaw, the use of e-cigarettes is further prohibited wherever smoking is prohibited under M.G.L. Chapter 270, Section 22 (the "Smoke-Free Workplace Law"), and in all locations listed in Section 8.23.3 of this by-law. The Director of Health and Human Services and/or his or her designee(s) shall enforce this section in accordance with Section 8.23.6.

#### SECTION 8.23.4 - POSTING REQUIREMENTS

Every person having control of a premises where smoking is prohibited by this by-law, shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking Prohibited By Law." Posting of the international symbol for "No Smoking" shall be deemed as compliance.

#### SECTION 8.23.5 - SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

a. Permit - No Entity otherwise permitted to sell tobacco products shall sell or offer to sell such products within the Town of Brookline without a valid tobacco sales permit issued by the Director of Public Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits shall be renewed annually by June 1<sup>st</sup>, at a fee set forth in the Department's Schedule of Fees and Charges. The Director of Public Health shall not issue any new tobacco sales permits to first-time permit applicants with businesses not licensed as of September 1, 2017. Holders of tobacco sales permits on the effective such date section may continue to use such permits. All such holders must apply for renewal of their permits according to the procedures of the Department. Those who fail to apply for renewal in a timely manner will ~~receive written notification from the Department and then those~~ have permits ~~may be revoked or fines imposed after such procedure as set forth in the procedures of the Department.~~ Any such action may be appealed to the Board of Selectmen within thirty (30) days. ~~However, applicants who acquire a business that is the holder of a tobacco sales permit may apply, within sixty (60) days of such acquisition, for a tobacco sales permit such as that held by the previous owner of the business, only if the buyer intends to sell tobacco products and will be operating a substantially similar business, and subject to rules and requirements of the Health Department.~~

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b. Prohibition of Tobacco Vending Machines - The sale of tobacco or e-cigarette products by means of vending machines is prohibited.

c. Restrictions on the Distribution of Tobacco or e-cigarette Products - No person, firm, corporation, establishment or agency shall distribute tobacco or e-cigarette products free of charge or in connection with a commercial or promotional endeavor within the Town of Brookline. Such endeavors include, but are not limited to, product "giveaways", or distribution of a tobacco or e-cigarette product as an incentive, prize, award or bonus in a game, contest or tournament involving skill or chance.

d. Prohibition of Sales ~~to Minors~~ - No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to ~~a minor~~ anyone born after 1/1/1976.

e. Self-Service Displays - All self-service displays as defined by 8.23.2 (e) are prohibited. All commercial humidors including, but not limited to walk-in humidors must be locked.

f. Prohibition of the Sale of Tobacco Products and e-cigarettes by Health Care Institutions - No health care institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. Additionally, no retail establishment that operates or has a health care institution within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco or e-cigarette products.

g. Prohibition of the Sale of Tobacco and e-cigarette Products by Educational Institutions - No educational institution located in the Town of Brookline shall sell or cause to be sold tobacco or e-cigarette products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

h. Required Signage

1. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post signage provided by

the Town of Brookline that discloses current referral information about smoking cessation.

2. The owner or other person in charge of an entity authorized to sell tobacco or e-cigarette products at retail shall conspicuously post a sign stating that "The sale of tobacco or e-cigarette products to someone ~~under the minimum legal sales age of 21 years of age~~born after 1/1/1976 is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than eight (8) feet from the floor.

i. Tobacco Sales

1. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco or e-cigarette products until such employee has received a copy of this By-law and federal and state laws regarding the sale of tobacco and e-cigarette and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

2. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser ~~is 21 years old or older~~was born prior to 1/1/1976.

3. All retail sales of tobacco or e-cigarette products within the Town of Brookline must be face-to-face between the seller and the buyer and occur at the permitted location, which can be no greater than 2000 square feet.

4. Original Cigar Package Price - All single cigars shall be sold for no less than two dollars and fifty cents (\$2.50). No person shall sell or distribute or

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cause to be sold or distributed any original factory-wrapped package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more. This section shall not apply to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Brookline.

5. No entity shall sell or distribute or cause to be sold or distributed any Flavored Tobacco Product.

6. No entity shall sell or distribute or cause to be sold or distributed blunt wraps.

### SECTION 8.23.6 - VIOLATIONS AND PENALTIES

a. Any person who violates any provision of this by-law, or who smokes in any area in which a "Smoking Prohibited By Law" sign, or its equivalent, is conspicuously displayed, shall be punished by a fine of \$100 for each offense. For a first violation of this section, and for any subsequent violation, the violator may be afforded the option of enrolling in a smoking cessation/education program approved by the Director of Health and Human Services or his/her designee(s). Proof of completion of such approved program shall be in lieu of the fines set forth in this Section and in Section 10.3 of these By-laws.

b. Any person having control of any premises or place in which smoking is prohibited who allows a person to smoke or otherwise violate this bylaw, shall be punished by a fine of \$100 for a first offense, \$200 for a second offense, and \$300 for a third or subsequent offense.

c. Employees who violate any provision of Section 8.23.3(b) or 8.23.5 shall be punished by a fine of \$100 per day for each day of such violation.

d. Any entity violating any other section of this by-law shall receive a fine of \$300.00 for ~~each offense~~the first two offenses then will have permit revoked on the third offense. They may appeal to the Department of Public Health

if they show that source of violation was corrected and would not occur again.

e. Violations of this by-law may be dealt with in a noncriminal manner as provided in PART X of the Town by-laws.

f. Each calendar day an entity operates in violation of any provision of this regulation shall be deemed a separate violation.

g. No provision, clause or sentence of this section of this regulation shall be interpreted as prohibiting the Brookline Health Department or a Town department or Board from suspending, or revoking any license or permit issued by and within the jurisdiction of such departments or Board for repeated violations of this by-law.

#### SECTION 8.23.7 - SEVERABILITY

Each provision of this by-law shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

Or act on anything relative thereto.

#### PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of the article filed for the Annual Town Meeting.

Tobacco is the only product that, when used as intended, will kill you. In an effort to protect all inhabitants, this warrant article proposes to reduce the potential impact of tobacco on future generations and stay ahead of tobacco's attempts to addict new users. This warrant article helps to prevent the future targeting of not only underage users but the extended social circle that can possibly provide increased access (NYTS 2018 study).

As society incrementally increases tobacco restrictions, youth initiation has decreased. This is another step towards preventing underage users from starting and helping the most motivated demographics to quit (AM J Prev Med 2015 Dec; 49(6):939-44). Seventy percent of adult smokers want to quit (Morbidity and Mortality Weekly Report. 2017; 65

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(52):1457-64) and this warrant article can increase their chances of success. Commonly known as Generation X, those born after 1976 have experienced the most education against the toxic effects of tobacco, but may have been exposed to it underage (90% of tobacco initiation occurs underage) at a time when they are most vulnerable to making bad decisions thus leading to addiction. Studies have frequently shown that brain development continues beyond the age of 21 (multiple studies, Neuropsychiatr Dis Treat 2013; 9:449-61) which is the current legal age to purchase tobacco. Under current law tobacco use may be initiated at a time when the brain has not fully developed to make the decisions that can impact us for the rest of our lives. However, smoking cessation before the age of 40 has been shown to reduce the risk of death to nearly the same level as non-smokers (N Engl J Med 2013; 368:341-50). The demographics that most frequently try to stop smoking are those under the age of 44 but they also have low success rates—this warrant article aims to help those groups that may have already experienced the full effect of education, want to stop this toxic habit, and allow them to regain years that might have been stolen due to a decision made when they were vulnerable. It also helps to close loopholes where frequent violators of current law can continue to profit without concern for possible loss of license. It helps strengthen the town Department of Public Health and allows those retailers that abide by the laws to have a level playing field. This warrant article is the next reasonable step to help our town defend itself against the tobacco industry's continued attempt to find new ways of addicting new, vulnerable users. It is with these reasons that the bylaw should be changed to prevent the sale of tobacco products to anyone born after January 1, 1976.

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## SELECT BOARD'S RECOMMENDATION

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## ADVISORY COMMITTEE'S RECOMMENDATION

**XXX**





# TOWN OF BROOKLINE

## *Massachusetts*

DEPARTMENT OF FINANCE

PURCHASING DIVISION

333 Washington Street  
Brookline, MA 02445  
617-730-2195  
Fax: 617-264-6446

To: Mel Kleckner, Patty Correa, Lloyd Gellineau, Kara Brewton  
From: David Geanakakis, Chief Procurement Officer  
Date: October 1, 2020  
Re: Warrant Article 15

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The majority of Town procurements fall under 3 separate procurement laws: MGL C30B for goods and services, MGL C149 for building construction and MGL C30 39M for horizontal, public works, construction. All have similar requirements, but this proposed bylaw does not comply with the sections listed on the following 2 pages of each law.

To a certain extent, the Town's contracts do participate in existing State and federal DBE programs as follows (although currently, there is incomplete information compiled regarding the Town contract breakdowns):

### State contracts

Under Ch30B and Ch149, the Town does make significant purchases from MA State Contracts issued and awarded by the State Operational Service Division. These are for office supplies, technology, building materials, and a wide variety of goods and services. Each State Contract company is required have DBE vendor participation program and report to OSD that information on an annual basis. The Town's purchases from these contracts automatically include that DBE spend.

### Highway contracts

Under Ch 30 39M, when using transportation funding either from State or Federal programs, DPW Engineering is required to comply with DBE requirements as set out under those programs.

### Building projects

Under Ch 149, the Building Department is required to follow MSBA DBE guidelines for school building projects funded by the State, the Ridley School and Pierce School projects are examples. In addition, those DBE guidelines are currently being followed for the High School and Driscoll School projects.

### Note on CH30B sheltered market programs:

A somewhat recent addition to Ch30B is Section 18 Sheltered market programs, included below for reference. It is my understanding it would require a Disparity Study to separately comply with constitutional requirements and no other municipalities have implemented a program under this section currently.

**There is no corresponding sheltered market program provision in Ch149 or Ch3039M.**

Ch30B

**Section 5: Competitive sealed bidding procedures**

(g) The procurement officer shall award the contract to the lowest responsible and responsive bidder.

**Section 18: Sheltered market programs**

Section 18. (a) For purposes of this section the following phrases shall have the following meanings:

"Disadvantaged vendor", any business beneficially owned by one or more minority persons in conformity with clauses (1) to (4), inclusive, of the definition of "Minority business" set forth in section forty N of chapter seven, and any business beneficially owned by one or more women as provided in the definition of "Women-owned business" set forth in said section 40N and any business beneficially owned by 1 or more veterans as provided in the definition of "veteran-owned business" as set forth in section 40N.

"Sheltered market program", a program under which certain contracts are designated by the chief procurement officer for procurement from one or more classes of disadvantaged vendors.

(b) When authorized by majority vote, a chief procurement officer may establish a sheltered market program in conformity with the requirements of this section. Such authorization may apply to a single contract or to any number or types of contracts, shall specify the class or classes of disadvantaged vendors to be included in the sheltered market program, and shall to the extent constitutionally required be based on findings that such program is a remedy for the present effects of past discrimination.

(c) A procurement officer shall not solicit or award a contract pursuant to a sheltered market program until the chief procurement officer, after notice and a public hearing, has approved written procedures for the operation of such program, has filed such procedures with the state office of minority and women business assistance and the secretary of state, and has published such procedures or a summary thereof in a newspaper of general circulation within the area served by the governmental body and in any publication established by the secretary of state for the advertisement of such notices.

Such written procedures shall, at a minimum, include:

(1) procedures for the certification of disadvantaged vendors, which procedures shall require the use of standardized application forms, the submission of applications sworn to under the penalties of perjury, the maintenance of certification records by the chief procurement officer or his designee, an opportunity for a business denied certification to be heard on such denial, the issuance of certificates valid for a period not longer than two years, notice and an opportunity to be heard prior to revocation of certificates, and a public information campaign to encourage certification; provided, however, that a governmental body's certification procedures may authorize participation in its sheltered market program by any eligible disadvantaged vendor duly certified under the sheltered market program of another governmental body or by the state office of minority and women business assistance;

(2) in the event the authorization required by paragraph (b) does not designate the specific contracts to which the sheltered market program applies, procedures for designating such contracts, which procedures shall (i) set forth criteria for designating contracts, (ii) require that each designation be in writing and based on written findings that the contract meets such criteria, and (iii) provide for an administrative review of the appropriateness of including the contract in the sheltered market program;

(3) procedures for ensuring effective competition among disadvantaged vendors for contracts within the sheltered market program, including procedures requiring (i) supplemental advertising in media serving disadvantaged communities, (ii) for the procurement of a supply or service in the amount of one thousand dollars but less than ten thousand dollars, the receipt of written or oral quotations from no fewer than three certified disadvantaged vendors

customarily providing such supply or service; provided, however, that a quotation shall not be considered until the vendor has submitted to the procurement officer a copy of a valid certificate, and (iii) for the procurement of a supply or service in the amount of ten thousand dollars or more, the receipt of responsive bids or proposals from no fewer than three certified disadvantaged vendors; provided, however, that a bid or proposal shall not be considered unless accompanied by a copy of a valid certificate; and

(4) procedures for review and assessment of the sheltered market program, at least annually, based upon a detailed written report by the chief procurement officer or his designee, which report shall at a minimum set forth for the twelve months then ending (i) the number and dollar value of contracts awarded to disadvantaged vendors under the sheltered market program, (ii) the total number, the percentage, the total dollar value, and the percentage dollar value of contracts awarded by the governmental body to disadvantaged vendors eligible for participation in the sheltered market program, (iii) a description of other efforts undertaken by the governmental body to increase its contracting with disadvantaged vendors, and (iv) recommendations for continuing, modifying, or terminating the program.

A violation of any valid procedure adopted pursuant to this section shall constitute a violation of this chapter.

(d) Advertisements for a contract within the sheltered market program shall state that the contract will be awarded under a sheltered market program and shall specify the class or classes of disadvantaged vendors to which competition for the contract is limited.

(e) In no event shall a contract designated for inclusion in a sheltered market program be awarded on a sole source basis. If fewer than three responsive bids, proposals, or quotations are received, or if all bids, proposals, or quotations are rejected pursuant to section nine, the contract shall not be awarded under the sheltered market program.

(f) No contract shall be awarded under a sheltered market program for a term exceeding three years, including any renewal, extension, or option. No disadvantaged vendor shall be awarded a sheltered market program contract if at the time of award such vendor is a party to any other sheltered market program contract the term of which, including any renewal, extension, or option, has not expired. No disadvantaged vendor shall be awarded more than three sheltered market program contracts by one or more governmental bodies within any one-year period.

(g) Except as otherwise provided in this section, all procurements under a sheltered market program shall be undertaken in accordance with the provisions of this chapter.

#### Ch149

(C) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$50,000 ... shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids

#### Ch30 39M

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is estimated by the awarding authority to cost more than \$50,000, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection (1) of section 44A of chapter 149, estimated to cost more than \$50,000 ... shall be awarded to the lowest eligible responsible bidder on the basis of competitive bids

**Co-petitioners:** Deborah Brown, Arthur Conquest, III, Bob Lepson, Nicole McClelland, Hadassah Margolis, C. Scott Ananian, Bettina Neufeind, Sean Lynn-Jones, David Lescohier, Bob Schram, Luciana Schachnik and Anne Greenwald

### **Increasing Disadvantaged Business Opportunities in the Town of Brookline, Massachusetts**

#### **SECTION 4.1 Introduction**

The Town of Brookline ensures that it shall work to address barriers to participation in its contracting program that may exist due to discriminatory market or other conditions. The Town of Brookline shall strive create an equitable environment in which "Disadvantaged Businesses Enterprises" (DBEs) may compete fairly for contracts and subcontracts in Brookline.

This By-law shall be construed in a manner that is harmonious with Articles 4.4 and 4.5 of the Town's General By-laws.

#### **SECTION 4.2 DBE Program Objectives**

- 1) Ensure nondiscrimination in the award and administration of all contracts and subcontracts.
- 2) In a manner and to the extent that is consistent with all applicable federal and state constitutional, statutory and other laws, regulations and codes, develop a strategy to level the playing field on which DBEs can compete fairly for contracts and subcontracts by:
  - removing barriers to participation in the procurement process;
  - providing opportunities for DBE participation; and
  - assisting with the development of diverse firms that can compete successfully in the marketplace independently of the DBE program.
- 3) Provide appropriate and legally necessary flexibility to Brookline in establishing a DBE program.

Commented [PC1]: What does this mean?

#### **SECTION 4.3 DBE Program Eligibility**

To be considered a DBE for purposes of the Town of Brookline's DBE program, the entity must be certified by the Massachusetts Supplier Diversity Office as either a Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Veteran Business Enterprise (VBE), and/or Portuguese Business Enterprises (PBE).

#### **Section 4.4 DBE Program**

The Town of Brookline shall develop a DBE program to implement the objectives in Section 4.2 above. The components of the DBE program and the program's implementation of it shall be compliant with all applicable federal, state and local

constitutional, statutory and other laws, regulations, by-laws and codes and be narrowly tailored to achieve the objectives. To the extent consistent with law, the DBE program may contain the following components:

1. Legally compliant participation goals by DBE certification category that are narrowly tailored to addressing any discriminatory market conditions that are specifically identified through a legally sufficient disparity study and/or other legally sufficient evidence. It is understood that the precursor steps necessary to the development of any such goals (possibly including, but not limited to, developing mechanisms for the necessary data collection; undertaking a legally sufficient disparity study) may be subject to appropriation. Use of quotas shall be prohibited.
2. Protected class-neutral measures targeted to achieve the objectives stated in Section 4. **4.2.**

#### **SECTION 4. **4.5** Policies and Procedures**

- 1) The Town shall develop legally sufficient policies and procedures for implementation of its DBE program, with the participation of the Director of the Office of Diversity, Inclusion and Community Relations, who shall also be responsible for monitoring compliance with this law.
- 2) To the extent permitted by law (including, but not limited to, Articles 4.4 and 4.5 of the Town's General By-Laws) and applicable contract provisions, the Town may take steps against contractors who fail to comply with applicable DBE program policies and procedures.

#### **Section 4. **4.8** Effective Date**

This section, 4. **4.8** shall take effect July 1, 2022.

To: Mel Kleckner, Dave Geanakakis, Lloyd Gellineau, Kara Brewton  
 From: Patty Correa, First Assistant Town Counsel  
 Date: October 1, 2020  
 Re: Warrant Article 15 (DBEs)

The following are a few “bigger picture” legal comments concerning Warrant Article 15 as filed (aside from State procurement law concerns, which are addressed in a separate memorandum from the Town’s Chief Procurement Officer, David Geanakakis). While a few specific examples are noted below, overall, some of the language in the proposed by-law would benefit from greater precision and would merit a more careful review.

1. “Goals” provisions and the Equal Protection Clause. Long-standing United States Supreme Court precedent prohibits race-/national origin-conscious decision-making<sup>1</sup> in public contracting except under very limited circumstances. See *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (available at <https://supreme.justia.com/cases/federal/us/488/469/>); *Personnel Admin. of Mass. v. Feeney*, 442 U.S. 256, 273 (1979) (“A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.”) (available at <https://supreme.justia.com/cases/federal/us/442/256/>). There must be a “compelling” purpose for it, which can include remedying the public actor’s passive participation in a third party’s discrimination. *Croson*, 488 U.S. at 492-93. There must be a “strong basis in evidence” that the race-/national origin-based decision-making is a necessary remedy. *Croson*, 488 U.S. at 500. In *Croson*, the Supreme Court said that evidence of gross statistical disparities between the public actor’s historical contracts and a proper comparator (pool of qualified applicants) could be sufficient to raise an inference of discrimination. *Id.* at 501-02, 503, 508. Public actors must identify the discrimination “with some specificity before they may use race-conscious relief”, and “the reason for any such classification [must] be clearly identified and unquestionably legitimate.” *Id.* at 504-05.

In addition, the use of preferences such as race-conscious “goals” must be “narrowly tailored” to serve as a constitutional remedy. Quotas or set asides are *per se* unconstitutional. *Croson*, 488 U.S. at 507-08.<sup>2</sup> The use must be limited in time, *e.g.*, through use of a sunset provision or periodic review to determine whether the measure continues to be necessary to achieve the compelling purpose. *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (available at <https://supreme.justia.com/cases/federal/us/442/256/>). While narrow tailoring “does not require exhaustion of every conceivable race-neutral alternative”, it does “require serious, good faith consideration of workable race-neutral

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<sup>1</sup> *I.e.*, decision-making that is at least partially based on race/national origin.

<sup>2</sup> In *Croson*, the Supreme Court explained in ruling that Richmond’s affirmative action contracting program was unconstitutional: “The 30% quota cannot be said to be narrowly tailored to any goal, except perhaps outright racial balancing.” *Id.* at 507-08.

alternatives” that will achieve the compelling purpose. *Grutter*, 539 U.S. at 339-40; *see also Croson*, 488 U.S. at 507.

Several fairly recent federal appeals court decisions that have variously approved and rejected state and municipal affirmative action contracting programs illustrate the application of the above principles.

In *H.R. Rowe Co., Inc. v. Tippet*, 615 F.3d 233 (4<sup>th</sup> Cir. 2020) (available at <https://casetext.com/case/hb-rowe-v-tippet>), the Court found that a disparity study conducted by North Carolina showed a gross statistical disparity between the amount of contracting dollars and the availability of African American and Native American contractors only (and not with regard to other protected classes), and that an inference of discrimination as to those two groups only was otherwise supported by anecdotal evidence collected by the State. The Court upheld “goals” regarding these two groups and struck down the goals as to other protected classes that had been included (e.g., Hispanics and Asian-Americans). *Id.* at 250-52. As to the goals it upheld, the Court found the program overall to be narrowly tailored based on its inclusion of race-neutral measures to increase contracting diversity (e.g., waiver of bonding requirements, offers of technical assistance) identified in a federal regulation, 49 CFR s. 26.51(b). *Id.* at 252-53. Further, the plan had an expiration date and required a new disparity study every 5 years. *Id.* at 253. In addition, the State had taken steps on a “contract-by-contract basis” to assure that the goals “accurately reflect the availability of minority-owned businesses” as to each contract. *Id.* at 253. Finally, it provided for a waiver of subcontracting goals where the prime contractor makes a good faith effort to meet the goals. *Id.* at 253-54. The Court concluded by upholding the plan as to African-American and Native American contracting goals and ruled it unconstitutional as to all other protected classes that had been included (women, Hispanics, Asian-Americans). *Id.* at 256.

In *Midwest Fence Corp. v. United States Dep’t of Trans.*, 840 F.3d 932 (7<sup>th</sup> Cir. 2016) (available at <https://caselaw.findlaw.com/us-7th-circuit/1753136.html>), the Court upheld affirmative action plans that included “goals” maintained by various Illinois agencies that were targeted to federally-funded U.S. Department of Transportation contracts, after finding that the U.S.D.O.T. affirmative action regulations the State was implementing through the plans passed constitutional muster. Specifically, the federal program had been repeatedly reauthorized based on new disparity studies every few years. *Id.* at 936. The regulations presumed racial and ethnic minority disadvantaged status but still required evidence and certification of it. *Id.* States were required to adjust the goals based on their own local market and other conditions. *Id.* The regulations required States to use race-neutral measures to the maximum extent feasible to meet their goals and permitted them to seek goals waivers. *Id.* at 936-37. Further, Illinois’s implementation of the federal program used a number of race-neutral initiatives (e.g., mentoring and training programs, “unbundling” of contracts to facilitate small business participation), and waivers for prime contracts who make good faith efforts to meet the

goals. *Id.* at 937. The Court **separately** analyzed Illinois affirmative action programs that did not receive federal transportation funding (it did not analyze them based on any “borrowing” from its analysis of the U.S.D.O.T.-funded programs), finding these too passed constitutional muster where they **independently** adopted the federal measures. *Id.* at 938. Based on these features, the Court upheld the plans as being sufficiently flexible to be deemed “narrowly tailored” to addressing the discrimination specifically identified. *Id.* at 942-956.

Warrant Article 15 does not appear to comply with the principles that are evident from the foregoing. It states “MBE” and “WBE” goals that are not targeted at discrimination against specific protected class groups identified in Brookline’s historical contracting practices based on “gross statistical disparities” identified in specific product and geographic markets<sup>3</sup> and other evidence of discriminatory market conditions (and it is otherwise unclear regarding the metric).<sup>4</sup> It proposes goals that are fixed in time; one should question whether specific goals should ever be included in a relatively fixed, static policy document such as a by-law, given the constitutional considerations explained above. It is silent regarding race-neutral measures. This is a non-exhaustive list of features that could prove problematic in an Equal Protection Clause challenge. This is a complex area of the law that requires careful, deliberate analysis.

The Equal Protection Clause is enforceable against public actors through 42 U.S.C. s. 1983. That federal statute provides for potential individual as well as Town liability, and for remedies that include compensatory damages and attorneys’ fees and costs. There may be limits to indemnification of Town officials under G.L. c. 258, s. 13 (due to the carve-out for intentional violations of civil rights). A Town “policy” such as a by-law

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<sup>3</sup> I understand that Petitioner Brown may be contemplating suggesting an amendment to the “goals” to borrow from Massport’s “goals”. However, it is not clear that the product and geographic markets are on all fours; as the cases cited above illustrate, such “borrowing” of the evidentiary predicate for such plans may be constitutionally permissible only under limited circumstances.

<sup>4</sup>In addition, Section xx.6 states: “Covered contractors who do not satisfy the DBE and affirmative hiring requirements could face suspension and debarment or be cited for breach of contract”. It is not clear what is meant by “suspension” or “debarment”. If what is meant is “suspension” is termination of a contract, that is a potentially actionable breach of contract that must be vetted. If “debarment” refers to ineligibility for future contracts, that may not comply with Massachusetts procurement law. In addition, the language is vague in identifying the “DBE and affirmative hiring requirements” that are enforced through the rest of the sentence. If this is intended to enforce the “goals”, that could be problematic under the Equal Protection Clause, pursuant to the above discussion. At a minimum, clarity of language is needed.



can be challenged as “facially” unconstitutional under Section 1983, and would constitute a primary piece of evidence in a “reverse discrimination” challenge.

For the foregoing reasons, it is essential that a Town by-law be carefully crafted to comply with constitutional requirements. The lesson is evident in the City of Boston’s history with affirmative action contracting litigation. It appears from the public record that Boston’s affirmative action contracting program was dismantled in the early 2000s after a federal court Equal Protection Clause challenge under 42 U.S.C. s. 1983. *See P.J. Gear & Son v. City of Boston*, Civ. Action No. 1:01-cv-10410 (NG); Jin-ah Kim, “City to boost biz deals for minorities, women”, *Bay State Banner*, Jan. 6, 2009. Boston undertook a new disparity study but it was inconclusive. *See Bay State Banner*, *supra*. The *P.J. Gear* case was a fifth or sixth legal challenge to Boston’s supplier contracting program that required “best efforts” to meet stated percentage goals. One of the settlements reportedly called for a payment of approximately \$1.5 million. *Id.* Recently, the City of Boston contracted with a third party for a disparity study, which is underway, according to Boston’s website. *See* <https://www.boston.gov/economicdevelopment/disparity-study>. Apparently pending those results, on November 8, 2019, Boston Mayor Marty Walsh entered an Executive Order providing for enhanced outreach efforts to DBEs as a race-neutral interim step. *See* [https://www.boston.gov/sites/default/files/file/2020/09/Equitable%20Procurement%20Executive%20Order\\_11.8.19.pdf](https://www.boston.gov/sites/default/files/file/2020/09/Equitable%20Procurement%20Executive%20Order_11.8.19.pdf).<sup>5</sup>

WA 15 proposes race-conscious “goals” but does not offer a disparity or other study to support it. As is evident from the foregoing, Section 1983 challenges to such goals involve a rigorous examination and cross-examination of the evidentiary basis for the goals and whether they pass constitutional muster. A solid disparity study such as DCAM’s study (*see* n. 5) could provide a roadmap for the defense of such a challenge and offers the prospect of a successful defense. Absent that, the Petitioners themselves would be subject to cross-examination in depositions, and their testimony and any documentary basis they could provide to support the goals would be the sole avenue of defense. To my knowledge, the Petitioners have not, to date, undertaken the complex, rigorous exercise of creating the evidentiary basis to support WA 15 and successfully defend it against a legal challenge (nor has the Town done so). This is a highly complex undertaking involving expertise in markets, statistics, and the applicable legal framework, as is evident from the above-referenced cases and discussion.

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<sup>5</sup> We understand that Somerville may be contemplating undertaking a disparity study, but we do not have information regarding the status of any such effort. The Massachusetts Department of Capital Asset Management (“DCAM”) has undertaken a disparity every several years. Its latest study completed in 2017 is available at: <https://www.mass.gov/doc/business-disparities-in-the-dcamm-construction-and-design-market-area-study/download>. The 2017 DCAM disparity lays out in far greater detail than the above the applicable constitutional legal framework and a menu of best practices with regard to an affirmative action plan, including best practices with regard to race-neutral and race-conscious measures.

The foregoing provides a more than sufficient basis to seek additional expertise prior to adopting a Town policy (in the form of a by-law) that could subject the Town and its officials to liability. Before undertaking such goals, the Town must establish that there is a constitutional basis for doing so. It should also diligently explore available race-neutral options such as discussed in the cases cited above, in 41 CFR 26.51 (upon which they relied, available at <https://www.law.cornell.edu/cfr/text/49/26.51> ), and elsewhere (e.g., see the DCAM disparity study linked in n.5 and the November 8, 2019 City of Boston Executive Order linked above).

2. Other legal comments.

- a. In Section xx.1, WA 15 states that “Brookline residents meeting the definition of a minority or woman owned business or disadvantaged business shall be given additional consideration when awarding contracts, grants and professional services agreements” To the extent this language intends a resident preference, these can be legally problematic under the Privileges and Immunities Clause of the federal Constitution (since such preferences can have the effect of discriminating against out-of-state businesses). *See, e.g., Merit Constr. Alliance v. City of Quincy*, Civ. Action No. 1:12-cv-10458 (RWZ) (D. Mass. April 18, 2012) (granting preliminary injunction restraining ordinance providing for local preference, in absence of supporting study and data demonstrating need for it).
- b. Section xx.5 states the requirements of the Town’s “Affirmative Employment Programming” and is unclear in doing so.

Item 1 requires Town compliance with a federal executive order, EO 11246, *in toto*. I attach it. It is a lengthy document with many elements that do not seem appropriate for insertion in a Town bylaw (including provisions relating to the United States Secretary of Labor, for example). Did Petitioners intend to say that the Town incorporates certain of EO 11246’s non-discrimination provisions? That may be duplicative of what is already contained in GBL Art. 4.4, “Fair Employment Practices With Regard to Contracts”, and GBL Art. 4.5, “Discrimination Prohibition With Regard to Contracts”.

Item 2 requires “contractors, potential contractors, grantees or potential grantees” to “design and implement affirmative action employment program to ensure that equal opportunity is provided in all aspects”. The language is vague as to the required components. *See supra* regarding the Equal Protection Clause and goals, which also has application to the employment context.

**Office of Federal Contract Compliance Programs**

# Executive Order 11246, As Amended

## Executive Order 11246 — Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

### Part I — Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966–1970 Comp., p. 803]

### Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

#### Subpart A – Duties of the Secretary of Labor

##### SEC. 201

The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## Subpart B – Contractors' Agreements

### SEC. 202

Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or

understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

## SEC. 203

- a. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- b. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- c. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- d. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so

certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13672 of July 21, 2104, 79 FR 42971]

## SEC. 204

- a. The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this **Order** in any specific contract, subcontract, or purchase **order**.
- b. The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.
- c. Section 202 of this **Order** shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this **Order**.
- d. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this **Order**; and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this **Order**.

[Sec. 204 amended by EO 13279 of Dec. 16, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 77141 – 77144]

## **Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies**

### **SEC. 205**

The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### **SEC. 206**

- a. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.
- b. The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### **SEC. 207**

The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]



**SEC. 208**

- a. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.
- b. The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

**Subpart D – Sanctions and Penalties****SEC. 209**

In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

1. Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
2. Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
3. Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
4. Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
5. After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or

continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

6. Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 210**

Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 211**

If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 212**

When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in

Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **Subpart E – Certificates of Merit**

### **SEC. 213**

The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

### **SEC. 214**

Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

### **SEC. 215**

The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

## **Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts**

### **SEC. 301**

Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal

Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## SEC. 302

- a. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- b. The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- c. The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

## SEC. 303

- a. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.
- b. In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.
- c. In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 304**

Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

## **Part IV – Miscellaneous**

## **SEC. 401**

The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## SEC. 402

The Secretary of Labor shall provide administrative support for the execution of the program known as the “Plans for Progress.”

## SEC. 403

- a. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President’s Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.
- b. Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President’s Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

## SEC. 404

The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

# SEC. 405

This Order shall become effective thirty days after the date of this Order.

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## Office of Federal Contract Compliance Programs

An agency within the U.S.  
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To: Mel Kleckner, Dave Geanakakis, Lloyd Gellineau, Kara Brewton  
From: Patty Correa, First Assistant Town Counsel  
Date: October 1, 2020  
Re: Warrant Article 15 (DBEs)

The following are a few “bigger picture” legal comments concerning Warrant Article 15 as filed (aside from State procurement law concerns, which are addressed in a separate memorandum from the Town’s Chief Procurement Officer, David Geanakakis). While a few specific examples are noted below, overall, some of the language in the proposed by-law would benefit from greater precision and would merit a more careful review.

1. “Goals” provisions and the Equal Protection Clause. Long-standing United States Supreme Court precedent prohibits race-/national origin-conscious decision-making<sup>1</sup> in public contracting except under very limited circumstances. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (available at <https://supreme.justia.com/cases/federal/us/488/469/>); *Personnel Admin. of Mass. v. Feeney*, 442 U.S. 256, 273 (1979) (“A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.”) (available at <https://supreme.justia.com/cases/federal/us/442/256/>). There must be a “compelling” purpose for it, which can include remedying the public actor’s passive participation in a third party’s discrimination. *Croson*, 488 U.S. at 492-93. There must be a “strong basis in evidence” that the race-/national origin-based decision-making is a necessary remedy. *Croson*, 488 U.S. at 500. In *Croson*, the Supreme Court said that evidence of gross statistical disparities between the public actor’s historical contracts and a proper comparator (pool of qualified applicants) could be sufficient to raise an inference of discrimination. *Id.* at 501-02, 503, 508. Public actors must identify the discrimination “with some specificity before they may use race-conscious relief”, and “the reason for any such classification [must] be clearly identified and unquestionably legitimate.” *Id.* at 504-05.

In addition, the use of preferences such as race-conscious “goals” must be “narrowly tailored” to serve as a constitutional remedy. Quotas or set asides are *per se* unconstitutional. *Croson*, 488 U.S. at 507-08.<sup>2</sup> The use must be limited in time, *e.g.*, through use of a sunset provision or periodic review to determine whether the measure continues to be necessary to achieve the compelling purpose. *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (available at <https://supreme.justia.com/cases/federal/us/442/256/>). While narrow tailoring “does not require exhaustion of every conceivable race-neutral alternative”, it does “require serious, good faith consideration of workable race-neutral

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<sup>1</sup> *I.e.*, decision-making that is at least partially based on race/national origin.

<sup>2</sup> In *Croson*, the Supreme Court explained in ruling that Richmond’s affirmative action contracting program was unconstitutional: “The 30% quota cannot be said to be narrowly tailored to any goal, except perhaps outright racial balancing.” *Id.* at 507-08.



alternatives” that will achieve the compelling purpose. *Grutter*, 539 U.S. at 339-40; *see also Croson*, 488 U.S. at 507.

Several fairly recent federal appeals court decisions that have variously approved and rejected state and municipal affirmative action contracting programs illustrate the application of the above principles.

In *H.R. Rowe Co., Inc. v. Tippet*, 615 F.3d 233 (4<sup>th</sup> Cir. 2020) (available at <https://casetext.com/case/hb-rowe-v-tippet>), the Court found that a disparity study conducted by North Carolina showed a gross statistical disparity between the amount of contracting dollars and the availability of African American and Native American contractors only (and not with regard to other protected classes), and that an inference of discrimination as to those two groups only was otherwise supported by anecdotal evidence collected by the State. The Court upheld “goals” regarding these two groups and struck down the goals as to other protected classes that had been included (e.g., Hispanics and Asian-Americans). *Id.* at 250-52. As to the goals it upheld, the Court found the program overall to be narrowly tailored based on its inclusion of race-neutral measures to increase contracting diversity (e.g., waiver of bonding requirements, offers of technical assistance) identified in a federal regulation, 49 CFR s. 26.51(b). *Id.* at 252-53. Further, the plan had an expiration date and required a new disparity study every 5 years. *Id.* at 253. In addition, the State had taken steps on a “contract-by-contract basis” to assure that the goals “accurately reflect the availability of minority-owned businesses” as to each contract. *Id.* at 253. Finally, it provided for a waiver of subcontracting goals where the prime contractor makes a good faith effort to meet the goals. *Id.* at 253-54. The Court concluded by upholding the plan as to African-American and Native American contracting goals and ruled it unconstitutional as to all other protected classes that had been included (women, Hispanics, Asian-Americans). *Id.* at 256.

In *Midwest Fence Corp. v. United States Dep’t of Trans.*, 840 F.3d 932 (7<sup>th</sup> Cir. 2016) (available at <https://caselaw.findlaw.com/us-7th-circuit/1753136.html>), the Court upheld affirmative action plans that included “goals” maintained by various Illinois agencies that were targeted to federally-funded U.S. Department of Transportation contracts, after finding that the U.S.D.O.T. affirmative action regulations the State was implementing through the plans passed constitutional muster. Specifically, the federal program had been repeatedly reauthorized based on new disparity studies every few years. *Id.* at 936. The regulations presumed racial and ethnic minority disadvantaged status but still required evidence and certification of it. *Id.* States were required to adjust the goals based on their own local market and other conditions. *Id.* The regulations required States to use race-neutral measures to the maximum extent feasible to meet their goals and permitted them to seek goals waivers. *Id.* at 936-37. Further, Illinois’s implementation of the federal program used a number of race-neutral initiatives (e.g., mentoring and training programs, “unbundling” of contracts to facilitate small business participation), and waivers for prime contracts who make good faith efforts to meet the

goals. *Id.* at 937. The Court **separately** analyzed Illinois affirmative action programs that did not receive federal transportation funding (it did not analyze them based on any “borrowing” from its analysis of the U.S.D.O.T.-funded programs), finding these too passed constitutional muster where they **independently** adopted the federal measures. *Id.* at 938. Based on these features, the Court upheld the plans as being sufficiently flexible to be deemed “narrowly tailored” to addressing the discrimination specifically identified. *Id.* at 942-956.

Warrant Article 15 does not appear to comply with the principles that are evident from the foregoing. It states “MBE” and “WBE” goals that are not targeted at discrimination against specific protected class groups identified in Brookline’s historical contracting practices based on “gross statistical disparities” identified in specific product and geographic markets<sup>3</sup> and other evidence of discriminatory market conditions (and it is otherwise unclear regarding the metric).<sup>4</sup> It proposes goals that are fixed in time; one should question whether specific goals should ever be included in a relatively fixed, static policy document such as a by-law, given the constitutional considerations explained above. It is silent regarding race-neutral measures. This is a non-exhaustive list of features that could prove problematic in an Equal Protection Clause challenge. This is a complex area of the law that requires careful, deliberate analysis.

The Equal Protection Clause is enforceable against public actors through 42 U.S.C. s. 1983. That federal statute provides for potential individual as well as Town liability, and for remedies that include compensatory damages and attorneys’ fees and costs. There may be limits to indemnification of Town officials under G.L. c. 258, s. 13 (due to the carve-out for intentional violations of civil rights). A Town “policy” such as a by-law

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<sup>3</sup> I understand that Petitioner Brown may be contemplating suggesting an amendment to the “goals” to borrow from Massport’s “goals”. However, it is not clear that the product and geographic markets are on all fours; as the cases cited above illustrate, such “borrowing” of the evidentiary predicate for such plans may be constitutionally permissible only under limited circumstances.

<sup>4</sup>In addition, Section xx.6 states: “Covered contractors who do not satisfy the DBE and affirmative hiring requirements could face suspension and debarment or be cited for breach of contract”. It is not clear what is meant by “suspension” or “debarment”. If what is meant is “suspension” is termination of a contract, that is a potentially actionable breach of contract that must be vetted. If “debarment” refers to ineligibility for future contracts, that may not comply with Massachusetts procurement law. In addition, the language is vague in identifying the “DBE and affirmative hiring requirements” that are enforced through the rest of the sentence. If this is intended to enforce the “goals”, that could be problematic under the Equal Protection Clause, pursuant to the above discussion. At a minimum, clarity of language is needed.

can be challenged as “facially” unconstitutional under Section 1983, and would constitute a primary piece of evidence in a “reverse discrimination” challenge.

For the foregoing reasons, it is essential that a Town by-law be carefully crafted to comply with constitutional requirements. The lesson is evident in the City of Boston’s history with affirmative action contracting litigation. It appears from the public record that Boston’s affirmative action contracting program was dismantled in the early 2000s after a federal court Equal Protection Clause challenge under 42 U.S.C. s. 1983. *See P.J. Gear & Son v. City of Boston*, Civ. Action No. 1:01-cv-10410 (NG); Jin-ah Kim, “City to boost biz deals for minorities, women”, *Bay State Banner*, Jan. 6, 2009. Boston undertook a new disparity study but it was inconclusive. *See Bay State Banner, supra*. The *P.J. Gear* case was a fifth or sixth legal challenge to Boston’s supplier contracting program that required “best efforts” to meet stated percentage goals. One of the settlements reportedly called for a payment of approximately \$1.5 million. *Id.* Recently, the City of Boston contracted with a third party for a disparity study, which is underway, according to Boston’s website. *See* <https://www.boston.gov/economicdevelopment/disparity-study>. Apparently pending those results, on November 8, 2019, Boston Mayor Marty Walsh entered an Executive Order providing for enhanced outreach efforts to DBEs as a race-neutral interim step. *See* [https://www.boston.gov/sites/default/files/file/2020/09/Equitable%20Procurement%20Executive%20Order\\_11.8.19.pdf](https://www.boston.gov/sites/default/files/file/2020/09/Equitable%20Procurement%20Executive%20Order_11.8.19.pdf).<sup>5</sup>

WA 15 proposes race-conscious “goals” but does not offer a disparity or other study to support it. As is evident from the foregoing, Section 1983 challenges to such goals involve a rigorous examination and cross-examination of the evidentiary basis for the goals and whether they pass constitutional muster. A solid disparity study such as DCAM’s study (*see* n. 5) could provide a roadmap for the defense of such a challenge and offers the prospect of a successful defense. Absent that, the Petitioners themselves would be subject to cross-examination in depositions, and their testimony and any documentary basis they could provide to support the goals would be the sole avenue of defense. To my knowledge, the Petitioners have not, to date, undertaken the complex, rigorous exercise of creating the evidentiary basis to support WA 15 and successfully defend it against a legal challenge (nor has the Town done so). This is a highly complex undertaking involving expertise in markets, statistics, and the applicable legal framework, as is evident from the above-referenced cases and discussion.

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<sup>5</sup> We understand that Somerville may be contemplating undertaking a disparity study, but we do not have information regarding the status of any such effort. The Massachusetts Department of Capital Asset Management (“DCAM”) has undertaken a disparity every several years. Its latest study completed in 2017 is available at: <https://www.mass.gov/doc/business-disparities-in-the-dcamm-construction-and-design-market-area-study/download>. The 2017 DCAM disparity lays out in far greater detail than the above the applicable constitutional legal framework and a menu of best practices with regard to an affirmative action plan, including best practices with regard to race-neutral and race-conscious measures.

The foregoing provides a more than sufficient basis to seek additional expertise prior to adopting a Town policy (in the form of a by-law) that could subject the Town and its officials to liability. Before undertaking such goals, the Town must establish that there is a constitutional basis for doing so. It should also diligently explore available race-neutral options such as discussed in the cases cited above, in 41 CFR 26.51 (upon which they relied, available at <https://www.law.cornell.edu/cfr/text/49/26.51> ), and elsewhere (e.g., see the DCAM disparity study linked in n.5 and the November 8, 2019 City of Boston Executive Order linked above).

2. Other legal comments.

- a. In Section xx.1, WA 15 states that “Brookline residents meeting the definition of a minority or woman owned business or disadvantaged business shall be given additional consideration when awarding contracts, grants and professional services agreements” To the extent this language intends a resident preference, these can be legally problematic under the Privileges and Immunities Clause of the federal Constitution (since such preferences can have the effect of discriminating against out-of-state businesses). *See, e.g., Merit Constr. Alliance v. City of Quincy*, Civ. Action No. 1:12-cv-10458 (RWZ) (D. Mass. April 18, 2012) (granting preliminary injunction restraining ordinance providing for local preference, in absence of supporting study and data demonstrating need for it).
- b. Section xx.5 states the requirements of the Town’s “Affirmative Employment Programming” and is unclear in doing so.

Item 1 requires Town compliance with a federal executive order, EO 11246, *in toto*. I attach it. It is a lengthy document with many elements that do not seem appropriate for insertion in a Town bylaw (including provisions relating to the United States Secretary of Labor, for example). Did Petitioners intend to say that the Town incorporates certain of EO 11246’s non-discrimination provisions? That may be duplicative of what is already contained in GBL Art. 4.4, “Fair Employment Practices With Regard to Contracts”, and GBL Art. 4.5, “Discrimination Prohibition With Regard to Contracts”.

Item 2 requires “contractors, potential contractors, grantees or potential grantees” to “design and implement affirmative action employment program to ensure that equal opportunity is provided in all aspects”. The language is vague as to the required components. *See supra* regarding the Equal Protection Clause and goals, which also has application to the employment context.



## Office of Federal Contract Compliance Programs

# Executive Order 11246, As Amended

## Executive Order 11246 — Equal Employment Opportunity

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

## Part I — Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966–1970 Comp., p. 803]

## Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

### Subpart A – Duties of the Secretary of Labor

#### SEC. 201

The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **Subpart B – Contractors’ Agreements**

### **SEC. 202**

Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or

understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971]

## SEC. 203

- a. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- b. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- c. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, that to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- d. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so



certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13672 of July 21, 2104, 79 FR 42971]

## SEC. 204

- a. The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this **Order** in any specific contract, subcontract, or purchase **order**.
- b. The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.
- c. Section 202 of this **Order** shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this **Order**.
- d. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this **Order**; and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this **Order**.

[Sec. 204 amended by EO 13279 of Dec. 16, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 77141 – 77144]

## **Subpart C – Powers and Duties of the Secretary of Labor and the Contracting Agencies**

### **SEC. 205**

The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### **SEC. 206**

- a. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.
- b. The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

### **SEC. 207**

The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 208**

- a. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.
- b. The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

**Subpart D – Sanctions and Penalties****SEC. 209**

In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

1. Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
2. Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
3. Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
4. Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
5. After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or

continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

6. Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 210**

Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 211**

If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 212**

When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in

Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **Subpart E – Certificates of Merit**

### **SEC. 213**

The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

### **SEC. 214**

Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

### **SEC. 215**

The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

## **Part III – Nondiscrimination Provisions in Federally Assisted Construction Contracts**

### **SEC. 301**

Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal

Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## SEC. 302

- a. "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- b. The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- c. The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

## SEC. 303

- a. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.
- b. In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.
- c. In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## **SEC. 304**

Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

## **Part IV – Miscellaneous**

## **SEC. 401**

The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

## SEC. 402

The Secretary of Labor shall provide administrative support for the execution of the program known as the “Plans for Progress.”

## SEC. 403

- a. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President’s Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.
- b. Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President’s Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

## SEC. 404

The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.



# SEC. 405

This Order shall become effective thirty days after the date of this Order.

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## Office of Federal Contract Compliance Programs

An agency within the U.S.  
Department of Labor

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Washington, DC 20210  
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1-866-487-2365  
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ARTICLE 15

X ARTICLE

Submitted by: Deborah Brown, Arthur Conquest, III, Bob Lepson, Nicole McClelland, Hadassah Margolis, C. Scott Ananian, Bettina Neufeind, Sean Lynn-Jones, David Lescohier, Bob Schram, Luciana Schachnik and Anne Greenwald

**Increasing Disadvantaged Business Opportunities in the Town of Brookline,  
Massachusetts**

To see if the Town will amend the General by-laws:

**ARTICLE 4.3** CONTRACTS – PROHIBITED ACTION,

**ARTICLE 4.4** FAIR EMPLOYMENT PRACTICES WITH REGARD TO  
CONTRACTS and

**ARTICLE 4.5** DISCRIMINATION PROHIBITION WITH REGARD TO  
CONTRACTS

**ARTICLE 4.6** ESTABLISHING A MINORITY AND WOMEN OWNED BUSINESS  
PROGRAM

**SECTION 4.6 xx.1** Town of Brookline ensures that it shall work to eliminate discrimination on the basis of race, color, sex or national origin in the award and administration of Brookline’s grants, contracts, and professional services agreements.

The Town of Brookline shall create an equitable environment in which people of color and women owned businesses or “disadvantaged businesses” (DBE) to compete fairly for contracts and subcontracts and grants relating to the procurement, contracting and professional service activities in Brookline. Brookline residents meeting the definition of a minority or woman owned business or disadvantaged business shall be given additional consideration when awarding contracts, grants and professional services agreements. We urge the Brookline Housing Authority and the Brookline School Committee adopt this policy so that the entire Town demonstrates its uniform commitment to diversity and inclusion.

**SECTION 4.6 xx.2 Disadvantaged Business Enterprise Objectives:**

- 1) Ensure nondiscrimination in the award and administration of all programs;
- 2) Create a level playing field on which women owned and minority businesses can compete fairly for contracts, grants and professional services work;
- 3) Ensure that the Brookline’s DBE program is narrowly tailored in accordance with applicable Commonwealth and federal laws;
- 4) Ensure that only firms that fully meet these eligibility requirements are permitted to participate as DBE consistent with applicable Massachusetts requirements;
- 5) Help remove barriers to the participation of DBE, in working in Brookline;

- 6) Promote the use of DBE in all types of contracts and procurement activities conducted by recipients.
- 7) Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- 8) Provide appropriate flexibility to Brookline in establishing and providing opportunities for DBEs.

### **SECTION 4.6xx.3**

DBEs are for-profit small business concerns where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, and women are presumed to be socially and economically disadvantaged. Other individuals can also qualify as socially and economically disadvantaged on a case-by-case basis.

#### Requirements for DBE Participation

To participate in Brookline's DBE program, the small business owned and controlled by socially and economically disadvantaged individuals must receive DBE certification from the Supplier Diversity Office. It certifies companies as Massachusetts Minority Business Enterprises (MBE), Women Business Enterprises (WBE), Veteran Business Enterprises (VBE), and Portuguese Business Enterprises (PBE) as defined in 425 CMR 2.00, State Office of Minority and Women Business Assistance.

### **SECTION 4.6xx.4 Town of Brookline DBE Goals:**

1. MBE Goals:
  - a. At least 15% for professional services;
  - b. At least 15% for construction projects; and
  - c. At least 20% for procurement.
2. WBE Goals
  - a. At least 25% for professional services;
  - b. At least 20% for construction projects; and
  - c. At least 20% for procurement.

### **SECTION 4.6xx.5 Affirmative Employment Programming**

1. In addition to meeting these DBE requirements, the Town of Brookline shall comply with **Executive Order 11246 — Equal Employment Opportunity**, of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p.339, unless otherwise noted.
2. This Section applies to all contracts or grants over \$10,000 in Brookline's business in a year and companies or serve as a depository of government funds in any amount with greater than 20 employees.
  - i. Contractors and grantees will be required to report on the number of employees by race, ethnicity and gender for each of nine job categories. This report must be filed annually, not later than June 30, by:

- ii. Contractors, potential contractors, grantees or potential grantee's shall design and implement affirmative action employment programming to ensure that equal opportunity is provided in all aspects of employment.

#### **SECTION 4.6xx.6 Policies and Procedures**

The Town will develop applicable policies and procedures to meet the DBE goals and affirmative employment program consistent with applicable state and federal laws. The Town Administrator shall be responsible for the design and implementation of this warrant article. The Director of Planning will be responsible for design and implementation and the Director of Office of Diversity, Inclusion and Community Relations shall be responsible for monitoring compliance with this law.

Covered contractors who do not satisfy the DBE and affirmative hiring requirements could face suspension and debarment or be cited for breach of contract.

#### **Section 4.6xx.7 Applicability**

The Section shall apply to all municipal officers, Town employees, and Town departments and committees as well as their contractors and grantees.

#### **Section 4.6xx.8 Effective Date**

Barring an extension to this effective date by Town Meeting through subsequent action, the DBE plan shall take effect by July 1, 2021.

Or act on anything relative thereto.

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#### **PETITIONER'S ARTICLE DESCRIPTION**

First, Brookline has no DBE program to speak of. For every 100 females, there were 82.6 males. For every 100 females age 18 and over, there were 79.1 males. The median income for a household in the town was \$66,711, and the median income for a family was \$92,993. Males had a median income of \$56,861 versus \$43,436 for females. The per capita income for the town was \$44,327. About 4.5% of families and 9.3% of the population were below the [poverty line](#), including 5.3% of those under the age of 18 and 7.5% of those ages 65 and older. The racial makeup of the town was 73.3% [White](#), 3.4% [Black](#) or [African American](#), 0.12% [Native American](#), 15.6% [Asian](#) (6.7% [Chinese](#), 2.6% [Indian](#), 2.3% [Korean](#), 1.8% [Japanese](#)), 0.03% [Pacific Islander](#), 1.01% from [other races](#), and 3.0% from two or more races. [Hispanic](#) or [Latino](#) of any race were 5.0% of the population (0.9% [Mexican](#), 0.8% [Puerto Rican](#)). (Source: 2010 Census Quickfacts)<sup>1</sup>

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<sup>1</sup> WIKI, [https://en.wikipedia.org/wiki/Brookline,\\_Massachusetts](https://en.wikipedia.org/wiki/Brookline,_Massachusetts)

Now compare these data with Brookline's DBE participation and you will see that the number is under 5%, despite repeated requests to undertake creating a serious DBE program. We have asked for programming for years, with no measurable outcomes. What we are proposing is measurable and achievable. The Town simply needs to make a commitment to doing so. The case for having a meaningful DBE program is straightforward.<sup>2</sup>

Brookline stands to save money and improve the economic position of women and people of color here and beyond. There are many DBE programs from which to model a program, including MassPort and the MA Department of Transportation.<sup>3</sup> We expect that many of our contractors are participating in DBE programming in other jurisdictions, because the law requires it. Brookline would not have to create a program from nothing. Instead, they need only look at existing robust programs.

Big companies and, to a lesser extent, municipalities have a history of oppressing disadvantaged people. But diversity builds economic vitality, uplifts communities, and promotes productivity and resilience. Our sustainability is impossible without the inclusion of all. Here are some benefits of a DBE program.

#### 1. Closes the Racial Wealth Gap

We can trace the origins of today's racial wealth gap to Jim Crow-era practices like redlining and job discrimination which segregated African Americans from higher paying jobs and homeowner ownership opportunities that ultimately prevented wealth building. The [1935 Social Security Act did not afford coverage to domestic and agricultural workers, many of whom were African American](#), and its [requirements for residency and payroll information](#) also excluded the large number of African Americans working menial, "off the books" jobs and migrating North at the time.

Today, the median wealth for white families is about 12 times that for Black families averaging around \$140,000, and [one in four black households have zero or](#)

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#### **Business Network, 6 Reasons to Support Black-Owned B<sup>2</sup> Green Businesses**

Submitted by S. Reid on February 14, 2019

Forbes, Sep 25, 2018, 11:17am, Embracing Diversity And Fostering Inclusion Is Good For Your Business, [Sheree Atcheson](#), Contributor [Diversity & Inclusion](#)

Also see: COVID Community Data Lab: A new initiative from Boston Indicators compiling updated trends on mobility patterns, housing, social assistance, equity, housing and census response: [www.bostonindicators.org/reports/report-website-pages/covid\\_indicators\\_report](http://www.bostonindicators.org/reports/report-website-pages/covid_indicators_report)

<sup>3</sup> Massport DBE program. <http://massport.com/massport/business/diversity-compliance/dbe-program/>

**No. 527: Establishing the Office of Access and Opportunity Within the Executive Office of Administration and Finance**, <https://www.mass.gov/executive-orders/no-527-establishing-the-office-of-access-and-opportunity-within-the-executive>

[negative net worth](#) compared to less than one in ten white families without wealth. Even more concerning is that by 2053, the median wealth for Black families is projected to fall to zero.

Small businesses and entrepreneurs have been longtime wealth builders in our society. By supporting more Black-owned businesses, Brookline can create more opportunities for meaningful savings, property ownership, credit building and generational wealth.

## 2. Strengthens Local Economies

When small businesses flourish, so would Brookline. But banks often hinder that prosperity by discriminating against African American and other entrepreneurs of color seeking small business loans. A 2017 study by the National Community Reinvestment Coalition actually found that banks were twice as likely to provide business loans to white applicants than Black ones and three times as likely to have follow-up meetings with white applicants than more qualified Black ones. Massachusetts is no different.

If consumer spending accounts for 70 percent of the entire US economy, imagine what directing some of that spending power to Black-owned businesses across the country can do. [48 percent of small business purchases are recirculated locally](#) compared to only 14 percent of what's circulated by chain stores. Supporting Black-owned businesses in turn supports families, employees, and other business owners, as well as attracts community investors who provide banking services, loans, and promote financial literacy--all things that build economic strength.

## 3. Fosters Job Creation

Many African American business owners fund their own businesses due to the lack of capital mentioned earlier. This means that most Black-owned businesses are sole proprietorships that don't make enough money to pay employees. [2012 US census data showed that Black-owned businesses created 1 million jobs](#) compared to white-owned businesses which created almost 56 million.

In 2018, the [unemployment rate for African Americans fell to 6.6 percent](#), which was almost double that for white Americans and higher for other minority groups. Since Black-owned small businesses are likely to hire from the local community, supporting them can foster the job opportunities people need to achieve financial stability.

COVID-19 has certainly changed these outcomes. In the greater Boston area, as many as 50% of people of color owned firms may cease operations, because of inadequate access to capital.

## 4. Holds Companies Accountable

By now you've probably heard about [Gucci's highly offensive sweater design resembling blackface](#). While Gucci's under fire now for all of the decision making that went into the design's approval and eventual release, it's not an isolated incident. Many large companies vocally support minorities and their diverse cultures but practice policies that

keep systems of injustice intact. Whether it's [H&M's unsound marketing](#), [Starbucks' removing people from its store](#), or [Facebook's hiring diversity problem](#), African Americans and other minorities often bear the brunt of corporate discrimination.

When Brookline chooses a Black-owned business over problematic companies, we vote with your dollar by divesting from these kind of practices and hold companies accountable. And further down the road, you empower successful minority-owned businesses to implement equitable policies.

#### 5. Visibility and Representation in the Green Economy

Brookline's prosperity depends on the celebration of diversity by and for all peoples. DBE can go a long way in demonstrating that economic development is everybody's movement and when DBEs have a financial platform to stand on, they inspire more people to join our economy.

For the above reasons, voting in favor of a strong economic development program for people of color and women makes good economic sense for the entire Town.

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#### SELECT BOARD'S RECOMMENDATION

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#### ADVISORY COMMITTEE'S RECOMMENDATION

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**XXX**

## WARRANT

### THE COMMONWEALTH OF MASSACHUSETTS TOWN OF BROOKLINE SPECIAL TOWN MEETING

Norfolk, ss

To Any Constable of the Town of Brookline

Greetings:

In the name of the Commonwealth of Massachusetts, you are hereby required to NOTIFY and WARN the Inhabitants of the TOWN OF BROOKLINE, qualified to vote at elections to meet at the High School Auditorium in said Brookline and via Zoom on TUESDAY, the SEVENTEENTH day of NOVEMBER, 2020 at 7:30 o'clock in the evening for the Special Town Meeting at which time and place the following article is to be acted upon and determined by the representative town meeting:

#### **ARTICLE 1**

To see if the Town will:

- A) Appropriate additional funds to the various accounts in the fiscal year 2021 budget or transfer funds between said accounts;
- B) And determine whether such appropriations shall be raised by taxation, transferred from available funds, provided by borrowing or provided by any combination of the foregoing; and authorize the Select Board, except in the case of the School Department Budget, and with regard to the School Department, the School Committee, to apply for, accept and expend grants and aid from both federal and state sources and agencies for any of the purposes aforesaid.
- C) Appropriate \$245,871.50, to be expended under the direction of the Commissioner of Public Works, with any necessary contracts over \$100,000 to be approved by the Select Board, to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure.
- D) Appropriate \$50,000, to be expended under the direction of the Commissioner of Public Works, for improvements to the Netherland's Road facility.

or act on anything relative thereto.

#### **ARTICLE 2**

To see if the Town will vote to appropriate, borrow or transfer from available funds, a sum of money, to be expended under the direction of the Building Commission, with any necessary contracts to be approved by the Select Board and the School Committee to renovate and expand Brookline High School, including the acquisition and reconstruction



of the property located at 22 Tappan Street (formerly known as 111 Cypress Street) and renovations or repairs to Brookline High School, the Evelyn Kirrane Aquatic Center, the Unified Arts Building, the 66 Tappan Street Gym, and Cypress Field

or act any anything relative thereto.

### **ARTICLE 3**

To see if the Town will vote to authorize the Select Board to acquire, by purchase, gift, eminent domain or otherwise, in fee simple, the parcels of land located at 110 Fisher Avenue, 124 Fisher Avenue, 150 Fisher Avenue, and 146 Hyslop Road (Tax Parcel Identification #s 255-01-01, 256-24-00, 256-21-23, and 256-20-00) including all buildings and structures thereon and all privileges and appurtenances thereto belonging, as well as all trees and shrubs thereon, for general municipal purposes, and for all purposes and uses accessory thereto, and that to meet such expenditure to appropriate a sum of money to be expended at the direction of the Select Board, to pay costs of acquiring said property, and for the payment of all costs incidental and related thereto, including refurbishment of the buildings thereon, and to determine whether such amount shall be raised by taxation, transfer from available funds, borrowing or otherwise; to authorize the Selectmen to apply for, accept and expend any grants from any source whatsoever that may be available to pay any portion of this project or to take any other action relative thereto.

#### **Land Description:**

##### PARCEL I - Tract I (124 Fisher Avenue):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

EASTERLY	on Fisher Avenue, one hundred and fifty (150) feet;
NORTHERLY	on land now or formerly of Montrose Foundation, Inc., one hundred and sixty (160) feet;
WESTERLY	on lot marked "27,329 S.F." on said plan, one hundred eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	on land now or formerly of the Sisters of the Holy Cross Inc., seventy seven and 15/100 (77.15) feet; and
SOUTHERLY	on the same, eighty-nine and 27/100 (89.27) feet.

Containing twenty-five thousand and eighty-nine (25,089) square feet of land, more or less, according to said plan.

##### PARCEL II - Tract II (146 Hyslop Road):

A certain parcel of land situated in Brookline, Massachusetts, shown on a plan entitled "Plan of Land, Hyslop Road, Brookline, Norfolk County, Mass. Property Line Plan" by Yunits Engineering Co., Inc., Consulting Engineers, dated August 31, 1982 and recorded with said Registry as Plan No. 1057 of 1983, in Plan Book 307, bounded and described as follows:

WESTERLY	on Hyslop Road by two curved lines, one measuring eighty-one and 6/100 (81.06) feet, the other measuring thirty-eight and 68/100 (38.68) feet;
NORTHERLY	by two lines, one measuring thirty-five and 38/100 (35.38) feet, the other measuring one hundred (100) feet;
EASTERLY	by a line, one hundred and eighty and 80/100 (180.80) feet;
SOUTHEASTERLY	by a line, forty-eight and 30/100 (48.30) feet; and
SOUTHWESTERLY	on land now or formerly of Judith Sprague, one hundred eighty- two and 53/100 (182.53) feet.

Containing twenty-seven thousand three hundred twenty-nine (27,329) square feet of land, more or less, according to said plan.

PARCEL III (110 Fisher Avenue):

BEGINNING at the northeasterly corner of the granted premises at a stone bound set in the southwesterly sideline of Fisher Avenue as shown on a plan hereinafter mentioned;

SOUTH 26° 17' 50" EAST by Fisher Avenue 120.00 feet to a point at remaining land of the Commonwealth of Massachusetts; thence

SOUTH 63° 42' 10" WEST by said land of the Commonwealth of Massachusetts 357.80 feet to a point at land now or formerly of Frank R. and Etta P. Pratt; thence

NORTH 39° 28' 50" EAST by said land of Pratt 168.59 feet to a stone bound; thence

NORTH 39° 29' 50" EAST 86.35 feet to a stone bound; thence

NORTH 39° 48' 50" EAST 39.39 feet to a stone bound; thence

NORTH 64° 02' 30" EAST 89.29 feet to the bound first mentioned and the point of beginning.

Containing twenty-six thousand nine-hundred fifty-one (26,951) square feet and being shown on a plan entitled "Commonwealth of Massachusetts, Metropolitan District Commission, Water Division, Land in Brookline to be conveyed to Sisters of the Holy Cross of Massachusetts, The Archbishop Cushing College," dated September 16, 1958,

Harold J. Toole, Director of the Water Division and Chief Water Supply Engineer, recorded with said Registry in Book 3700, Page 525.

Excluding so much of the premises that was conveyed by deed from Newbury College, Inc. to Syroos Sanicoff and Ronni M. Sanicoff dated April 28, 2003 and recorded in Book 18778, Page 143, which included the following parcel of land:

A certain parcel of land, now known as and numbered 154 Hyslop Road in said Brookline, shown as Lot A on a plan dated October 10, 2002 and entitled "Subdivision Plan of Land in Brookline, Massachusetts, Norfolk County, I. F. Hennessey Co.", recorded with said Registry as Plan No. 264 of 2003 in Plan Book 507, containing four thousand three hundred and forty-seven (4,347) square feet(+/-) of land.

PARCEL IV (150 Fisher Avenue):

Tract I:

Lot B on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 32,625 square feet, according to said Plan.

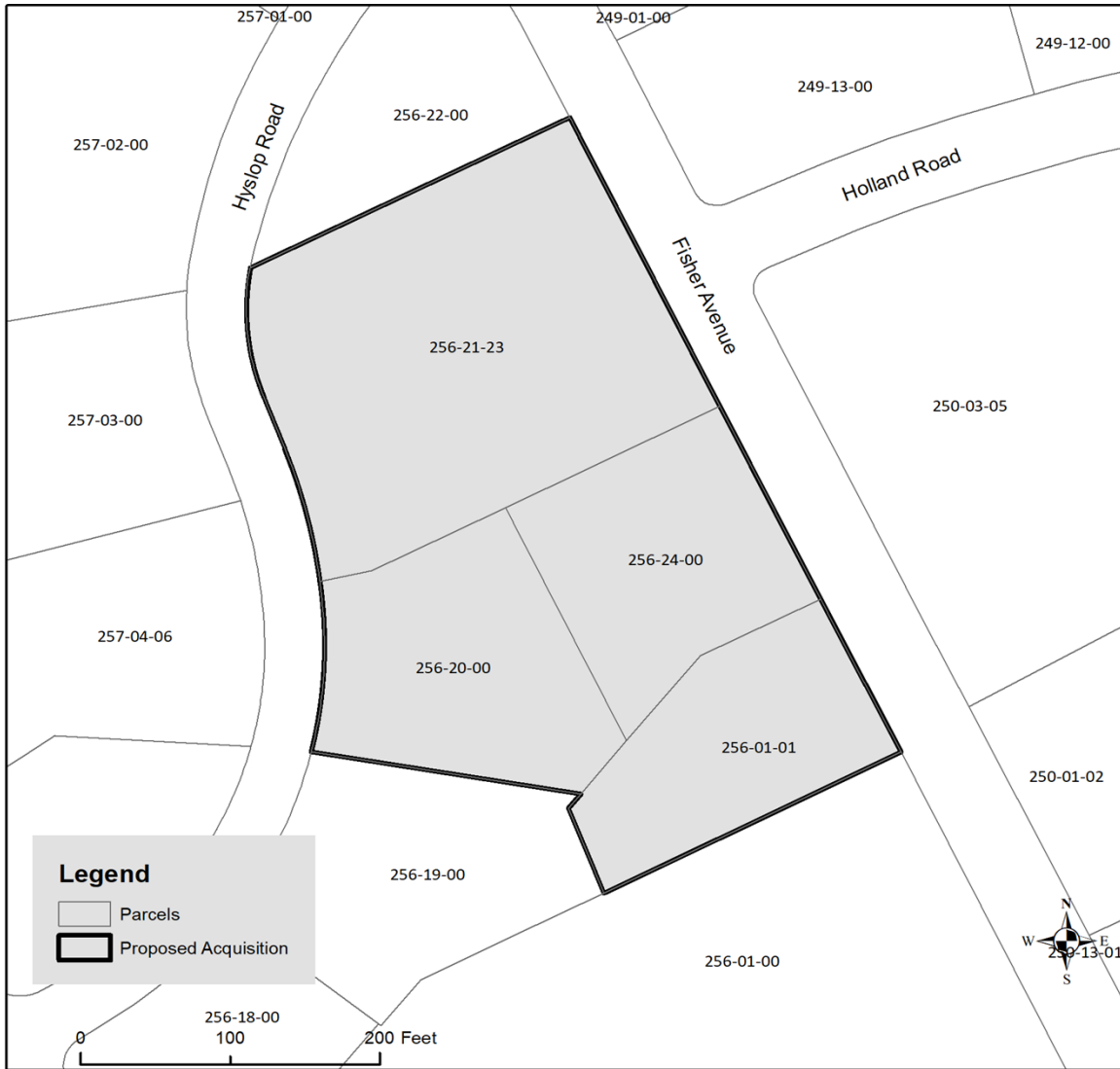
Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.

Tract II:

Lot A on plan entitled "Plan of Land in Brookline, Mass." by Henry F. Bryant & Son, Inc., dated August 26, 1954, and recorded with Norfolk County Registry of Deeds in Book 3295, Page 593.

Containing 28,510 feet, according to said Plan.

Being and intending to convey the same premises conveyed to the Grantor by Deed dated August 27, 1984 and recorded with said Registry in Book 6483, Page 351.



AND YOU ARE DIRECTED TO SERVE THIS WARRANT IN ACCORDANCE WITH THE BY-LAWS OF THE TOWN OF BROOKLINE.

HEREOF FAIL NOT, and make due return of this WARRANT, with your doings thereon, to the Select Board at least FOURTEEN DAYS before the day of said meeting.

Given under our hands and the seal of the TOWN of Brookline, Massachusetts, this 9th day of September 2020.




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SELECT BOARD

ARTICLE x

X ARTICLE

Submitted by: Human Resources

To see if the Town will raise and appropriate, or appropriate from available funds, a sum or sums of money to fund the cost items in collective bargaining agreements between the Town and various employee unions; fund wage and salary increases for employees not included in the collective bargaining agreements; and amend the Classification and Pay Plans of the Town; or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

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# 11.A.

November 17, 2020 Special Town Meeting

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## SELECT BOARD'S RECOMMENDATION

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## ADVISORY COMMITTEE'S RECOMMENDATION

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**XXX**

ARTICLE 7SEVENTH ARTICLE

Submitted by: Roger Blood

To see if the Town will amend Section 4.08 of the Town of Brookline Zoning Bylaw (Affordable Housing Requirements ~~Inclusionary Zoning~~) as follows (deletions appearing in strikeout, new language in underline):

#### §4.08 – AFFORDABLE HOUSING REQUIREMENTS

##### 2. Definitions

e. INCOME, LOW OR MODERATE means a combined household income which is less than or equal to 100% of the median income for affordable rental units as defined in Section 2.c.1. and which is less than or equal to 120% of the median income for affordable owner-occupied units as defined in Section 2.c.2, except for those units provided under paragraph 5 subparagraph a which shall comply under Chapter 40B of the Massachusetts General Laws, in which case low or moderate income shall mean a combined household income which is less than or equal to 80% of median income or any other limit established under Chapter 40B, its regulations or any amendment thereto.

##### 3. Applicability

a. any project that includes results in the creation of six four or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction or change of pre-existing residential or non-residential space; In the case of a renovation of and/or an addition to an existing building, any pre-existing units remaining within the pre-existing building shall not be counted when applying the 15 percent affordable unit set aside standard- or cash payment option in Paragraph 5 below. except that the resulting number of pre-existing units remaining within the pre-existing building shall not contribute to such count, A unit shall qualify as within the pre-existing building if no more than five percent of the unit's floor area falls outside the habitable area of the pre-existing building; and

b. any subdivision of land for development of ~~six~~ four or more dwelling units; and

c. any life care facility development that includes ~~six~~ four or more assisted living units and accompanying services.

##### 5. Required Affordable Units

a. For projects that include results in the creation of six four or more dwelling units in accordance with paragraph 3., above, the applicant shall be required to set aside 15% of the units ~~so created~~ as affordable units, except as the provisions of subparagraph d., below, shall apply. In the event that the required number of onsite affordable units is less than 0.5, the cash payment provision of subparagraph d. below shall apply as provided in the Affordable Housing Guidelines.

November 17, 2020 Special Town Meeting

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d. For projects ~~that include resulting in the creation of six~~ four to ~~15~~ 19 dwelling units, in accordance with paragraph 3., above, the applicant may choose to make a cash payment to the Housing Trust as provided in ~~based on~~ the Affordable Housing Guidelines.

Or act on anything relative thereto.

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#### PETITIONER'S ARTICLE DESCRIPTION

Section 4.08, "Affordable Housing Requirements", is a long and complex regulation, originally adopted over 30 years ago with the phaseout of rent control. Accompanying that new Inclusionary Zoning Bylaw was the creation of the Housing Advisory Board (HAB) and authorization for the Town's Affordable Housing Trust Fund. Since its inception, Inclusionary Zoning has received one formal review and update, including increased Trust Fund fees (2004).

In November 2018 the HAB initiated a review of the current Inclusionary Zoning Bylaw with an eye toward recommending appropriate improvements. A key objective of this review has been to evaluate whether Inclusionary Zoning requirements under recent local market conditions might be amended to generate additional affordable housing resources, while not over-reaching such as to discourage new housing production by causing it to become financially infeasible.

In 2019, the HAB sought and received from the Select Board funding approval to retain real estate and financial consultant Pam McKinney to undertake a financial analysis of the Town's current affordable housing zoning requirements and to recommend specific Housing Trust Fund fee increases under a conceptual framework developed by the HAB.

Article 7 would implement those recommendations by authorizing the adoption of an expanded and increased fee schedule for developer contributions to the Affordable Housing Trust. Further, the Article would recognize a new category of so-called "workforce housing" for affordable housing at a level of income that is consistent with state and federal affordable housing programs.

Article 7 accomplishes its limited objectives primarily by amending several numerical references in the existing Section 4.08, including:

1. The maximum household income that defines "affordable housing" for owner-occupied affordable units is increased from 100% to 120% of the Boston Area Median Income;
2. The minimum number of units in a project that triggers a developer affordable housing obligation, including optional payments to the Affordable Housing Trust, is reduced from "six" to "four" units.
3. The size range of projects that provides for an optional contribution to the Affordable Housing Trust is expanded from "six to fifteen" to "four to nineteen" total units.



4. For projects covered by Section 4.08, as amended, Article \_\_ also reduces the number of net new units that would trigger an affordable housing obligation from six added units to one added unit.

Passage of Article is timely because:

1. The Housing Trust needs additional funds that it does not currently have to support anticipated affordable housing developments by both non-profit sponsors and the Brookline Housing Authority; and
2. Current housing development in Brookline is especially active in very small projects not currently covered under the Bylaw.

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SELECT BOARD'S RECOMMENDATION

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ADVISORY COMMITTEE'S RECOMMENDATION

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**ADVISORY COMMITTEE’S RECOMMENDATION  
ARTICLE 9**

**SUMMARY**

Articles 9, 10 and 11 create regulations allowing for Short-Term Rentals in Brookline under specific circumstances. The regulations establish policies and procedures that operators of Short-Term Rentals must follow and identify the departments that will enforce the new regulations.

The Advisory Committee recommends FAVORABLE ACTION ON ARTICLE 9 AS AMENDED. The amended wording is at the end of the Recommendation.

**BACKGROUND**

Prior to Covid-19, there were an estimated 300-400 Short-Term Rentals operating in Brookline. However, the operation of a Short-Term Rental in Brookline is prohibited because Short-Term Rental is not explicitly listed in the Zoning By-Law’s Table of Use Regulations (Table 4.07). Table 4.07 is used by the Building Commissioner to determine what is allowed. Enforcement is currently handled by the Building Department on a complaint-driven basis and 15 to 20 Short-Term Rentals have been shut down as a result.

A Short-Term Rental warrant article (WA18) was filed by individual petitioners for the November 2019 Special Town Meeting. By a vote of 173 to 21 with 4 abstentions, Town Meeting referred the Article to the Planning and Economic Development Department which was preparing comprehensive Short-Term Rental regulations that had not been completed at that time.

The Planning and Economic Development Department with contributions by the Building Department, Health Department, and Fire Department drafted Warrant Articles 9, 10 and 11.

A brief description of Warrant Article 9 through 11 follows:

Article 9 – Amends the zoning Bylaw to define Short-Term Rentals and other related terms and adds Short-Term Rentals as an allowed use under the Table of Use Regulations of the Zoning By-law.

Article 10 – Amends the current Bylaw to create regulations allowing Short-Term Rentals under a specific set of circumstances and establishes policies and procedures that operators must follow.

Article 11 – Amends the current Bylaw to establish the Building Commissioner, Director of Health and Human Services, the Fire Chief, and the Town Administrator as enforcement agents.

**KEY ASPECTS OF PROPOSED SHORT-TERM RENTAL REGULATIONS**

Key aspects of the proposed Short-Term Rental Regulations as originally proposed in Warrant Articles 9, 10 and 11 include the following:

1. Short-Term Rentals are allowed to operate in all zoning districts.
2. The operator may be the owner or leaseholder of the unit.
3. There are three types of Short-Term Rentals:
  - a. Room Share where operator the is present during the rental. Occupancy is limited to 4 guests
  - b. Home Share where the whole unit is rented and the operator is not present during the rental. Occupancy is limited to 6 guests.
  - c. Owner Adjacent Unit is located in a two-family unit where the Short-Term Rental Operator's primary residence is located in the same building and the operator has legal control over the 2<sup>nd</sup> unit. The operator must be present during the rental. Occupancy is limited to 6 guests.
4. Units can be rented up to a total of 90 days per year (Room/Home Share) or 180 days per year (Owner Adjacent).
5. The operator's condominium association board must certify that the proposed STR complies with its condominium bylaws and other governing regulations.
6. The rental period must be between 24 hours and 31 days.
7. A fine of \$300 per day for each violation may be assessed.
8. Enforcement is done by the Police Department, Building Commissioner, Director of Health and Human Services, Fire Chief, and Town Administrator.

**DISCUSSION**

The Advisory Committee discussed a number of concerns related to the proposed Short-Term Rental regulations. The following is a summary of the concerns raised.

1. Impact on Long-Term Housing – Committee members were concerned about the impact that Short-Term Rentals have on the availability of Long-Term Housing. Studies<sup>1,2</sup> have shown that Short-Term Rentals increase rents by lowering Long-Term Housing inventories. Public comment highlighted a commercial Short-Term Rental operator in Brookline ([www.starsofboston.com](http://www.starsofboston.com)) that lists multiple Short-Term Rental units, including Washington Square, Brookline Village, Coolidge Corner, Longwood Medical Area, Cleveland Circle and St. Mary's. Each of these listings is a unit that may no longer be available for Long-Term Housing. Furthermore, the Owner-Adjacent Units would result in some of those units being converted from Long-Term Housing to Short-Term Rental.

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<sup>1</sup> Economic Policy Institute, *The Economic Costs and Benefits of AirBnb*, January 30, 2019, by Josh Bivens.

<sup>2</sup> Journal of Housing Economics, volume 38 pgs. 14-24, 2017, *Is Home Sharing Driving up Rents, Evidence from AirBnB in Boston*, University of Massachusetts, Boston

## 11.A.

2. Investor Loophole - The provision allowing a lessee to operate a Short-Term Rental with permission of the owner opens the door for investors to purchase housing units and operate them as Short-Term Rentals by installing lessees to oversee the rentals. Boston, out of concern for protecting its long-term housing inventory, requires that the Short-Term Rental operator be the owner of the unit and the unit must be the owner's primary residence. Boston does not allow lessees to operate Short-Term Rentals.
3. Presence of Owner - Requiring the owner to be physically present during the rental, would enhance regulatory compliance and reduce nuisance complaints. The owner's physical presence will also provide for an immediate response to complaints versus the owner being offsite and possibly out of state.
4. Enforcement - The proposed Warrant Articles create a complex set of regulations without corresponding funding to hire the necessary personnel to inspect and enforce Short-Term Rentals. The inspection and enforcement of Short-Term Rental units will burden already stretched resources at the building, health and fire departments. There is no clear, primary department responsible for enforcement. Committee members believe that the Building Department must take the lead on inspection and enforcement. Testimony was provided by several residents that Short-Term Rentals in their neighborhoods resulted in regular, illegal overnight parking, excessive trash and the continued operation of prohibited units even after filing complaints.
5. Regulations are needed – Short-Term Rentals are already operating in Brookline without a regulatory structure. Units currently being rented may violate existing safety codes and put residents and visitors at risk. Enforcement is done on a complaint basis and enforcement may be inconsistent. A set of regulations that inform operators, keep guests safe, support abutters and empower departments to proactively enforce regulations are needed.
6. Commercial Activity in residential zones – There was a discussion as to whether Short-Term Rentals should be prohibited from residential zones based on a ruling by the Land Court (Lylte vs. Hull ZBA) that such a use constitutes a commercial activity. Applying the Land Court decision could allow restricting Short-Term Rentals to non-residential business districts including G, L, O and I. Committee members discussed that zoning is a social contract with residents. Those who purchase in residential zones expect that commercial operations will not be in and amongst their properties. Allowing Short-Term Rentals in residential zones breaks the social contract that zoning provides.
7. Small Condo Association – Many of Brookline's older, multi-unit buildings that contain 2 to 4 units have been converted to condominiums. These structures, often configured as walk-ups with narrow stairways and poorly insulated walls and floors, were not constructed to support the activity associated with a high-volume, short-term rental business. Achieving consensus among all owners of smaller condo associations is very

difficult. However, the activities of one unit can greatly impact the quality of life for all other residents in the association.

8. Inspections Prior to Issuance of Certificates – As proposed, the regulations do not require that an inspection occur prior to the issuance of a Certificate of Operation. One of the primary reasons for regulating Short-Term Rentals is to ensure the safety of operators and visitors by certifying that the unit being offered to the public for rental complies with Brookline’s building, health and safety regulations. Committee members argued that inspections must take place before the issuance of a Certificate of Operation to ensure safety and to limit the Town’s liability.
9. Transparency and Proactive Enforcement – Committee members believe that Brookline should proactively enforce Short-Term Rentals by comparing the addresses from which tax revenues are received to the Certificate of Operations that have been issued. The Town should also require that anyone who advertises a Short-Term Rental in Brookline, must provide the address of the Short-Term Rental to the Town. Enforcement by complaint places an undue burden on the public to monitor Short-Term Rentals.

#### **AMENDED REGULATIONS**

The Advisory Committee approved a series of amendments to improve the proposed regulations. A central theme was to take a go-slow approach that would protect long-term housing and the safety of the public while not overwhelm enforcement resources and public acceptance. The amendments support the following changes to the proposed Short-Term Rental regulations.

1. Operator must be the owner of the unit and the unit must be the owner’s primary residence.
2. Operator (owner) must be physically present during the rental period.
3. Home-share and owner-adjacent units have been eliminated.
4. Room-share unit restricted to 2 rooms in addition to the proposed four guest limit.
5. Proposed Short-Term Rentals in condo associations of four units or less require all unit owners to agree to the Short-Term Rental operation in their association.
6. An inspection must be completed by the Town before a Certificate of Operations is issued.
7. Certificate of Operation is automatically revoked with 3 or more violations in a twelve-month period. A public hearing held by the Select Board is required before a revoked Certificate of Operation is re-instated.
8. Abutters within 300 feet of the Short-Term Rental unit must be notified by the Town within 15 days of the granting of a Certificate of Operation.
9. Town must publish on the Town’s website the active Short-Term Rental Certificate of Operations and violations.
10. Any operator advertising a Short-Term Rental in Brookline, must provide the Town with the address and owner information of the unit.

**RECOMMENDATION**

By a vote of 13-10-3 the Advisory Committee recommends FAVORABLE ACTION on an amended and revised Warrant Article 9, as follows (insertions underlined, deletions ~~strikethrough~~):

VOTED: The Town will amend the Zoning By-law as follows:

**1. By amending §2.19, “S” Definitions, as follows:**

**Inserting the following:**

~~1. Short-Term Rental (or “STR”) – The rental of a whole or whole or portion of a dwelling Dwelling Unit for not more than 31 consecutive calendar days, and a) a~~ As defined by M.G.L. Chapter 64G, Sec. 1, subject to the following limitations: -and b) ~~whose operations meets one of three category types as specified in the operator’s Certificate of Registration:~~

~~1. Room Share Units – At a the Dwelling Unit is the Short-Term Rental Operator’s Primary Residence of the operator, the operator is physically present in the Dwelling Unit unit during the rental, and occupancy is limited to a maximum of two rooms and four guests.~~

~~a. Home Share Units – At a Short-Term Rental Operator’s Primary Residence, the whole unit is available for a Short-Term Rental and no Short-Term Rental Operator(s) is/are present while the unit is being rented. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.~~

~~b. Owner Adjacent Units – The Short-Term Rental Operator’s Primary Residence is within a two-family building as defined by Principle Uses 2, 3, 4, or 4A in the Table of Use Regulations. The Short-Term Rental Operator owns or has legal control over the Short-Term Rental Unit and at least 1 other unit within the building. The Short-Term Rental Operator is present on the property during the rental. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.~~

In accordance with M.G.L. Chapter 64G, Sec. 1, the term excludes properties that are, or that are required to be, licensed as a lodging house because lodgings are rented to four or more persons not within the second degree of kindred to the owner or operator. The term also excludes properties that are, or that are required to be, licensed as a hotel, motel, or bed and breakfast establishment.

# 11.A.

2. Short-Term Rental Operator – Any person operating a Short-Term Rental. An ~~operator~~ Operator ~~may~~ must be the owner or leaseholder of the Short-Term Rental Unit ~~with the written permission from the lessor.~~

3. Short-Term Rental Unit – A whole or portion of a whole Dwelling Unit that is being offered as a Short-Term Rental.

**And increasing each subsequent section number by 3.**

**2. By amending §2.16, “P” Definitions, as follows:**

**Renumbering the five existing sections titled “PARKING GARAGE OR PARKING AREA, NON-RESIDENTIAL”, “PARKING GARAGE OR PARKING AREA, RESIDENTIAL”, “PORCH, ENCLOSED AND UNENCLOSED”, “PRIVATE CLUB OR LODGE”, and “PROFESSION, RECOGNIZED” as sections**

**1, 2, 3, 5, 6 respectively and inserting the following after “3. PORCH, ENCLOSED AND UNENCLOSED”:**

4. Primary Residence – Any property at which a resident resides for at least 183 days of the calendar year.

**3. By amending §4.07, Table of Use Regulations, as follows:**

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<u>51C. Short-Term Rentals in possession of a valid Town Certificate of Registration and in accordance with §4.14 only.</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>

**4. By amending the Use Regulations by adding the following section, §4.14, Short-Term Rentals:**

**§4.14 – SHORT-TERM RENTALS**

**1. Purpose**

# 11.A.

This section is intended to protect the health and safety of visitors and residents, ensure that the primary use of these properties remains as a residence, and to minimize the effect Short-Term Rentals have on the character and livability of residential neighborhoods and the well-being of surrounding residents.

## 2. Applicability

- a. The requirements of this section shall apply to any Short-Term Rental. No property shall be offered as a Short-Term Rental except in compliance with each of the provisions of this By-Law.
- b. Except as may be provided in Section 5.11.4 with respect to condominium associations of four (4) or less units, ~~This By-Law does not supersede any lease or~~ condominium association's by-laws. Nothing in this By-Law shall be construed to make the Town responsible for compliance with or enforcement of ~~a lease,~~ condominium by-laws or other governing documents, or any contract or agreement to which the Town is not a party.

## 3. Requirements

Short-Term Rentals shall comply with all applicable federal, state, and local laws, regulations and codes, including, but not limited to, Town's General By-law entitled "Short-Term Rentals".

**These amendments to the Zoning By-law shall go into effect on January 1, ~~2021~~2022.**



# *Town of Brookline*

## *Massachusetts*

10/16/20

Department of Planning and  
Community Development  
Town Hall, 3rd Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2130  
Alison Steinfeld, Director

### **Article 9: Short-Term Rentals**

### **Planning Board Report and Recommendation to Town Meeting**

#### **Warrant Article Description**

This article proposes to add Short-Term Rental (STR) as a defined term in the Zoning By-law, allow the use in all zoning districts, and establish requirements for the operation of the use. Under the proposed definition, Short-Term Rentals would be defined consistent with the state's definition under M.G.L. c. 64G, Sec. 1 and further limited to 3 types of short-term rentals: Room Share Units, Home Share Units, and Owner Adjacent Units. The article also proposes new definitions for other relevant terms like Short-Term Rental Operator, Short-Term Rental Unit, and Primary Residence. The three types of Short-Term Rentals that would be allowed by this article are basically defined as follows (the proposed regulations impose further restrictions on each type):

*Room Share Unit:* the renting of a room within the operator's primary residence

*Home Share Unit:* the renting of the operator's entire primary residence

*Owner-Adjacent Unit:* the renting of another unit located in the same building as the operator's primary residence.

In the case of both the Room Share Unit and the Owner-Adjacent Unit, the operator must be present during the rental, while the Home Share Unit does not have the same requirement (for obvious reasons). Each type of STR would also include limitations on occupancy and Owner Adjacent Units would be limited to 2-family buildings.

A new Section 4.14 would be added to the Zoning By-law dedicated to STRs. The section is fairly limited in scope but, critically, it requires that all STRs must comply with the regulations in the section of the General By-law entitled "Short-Term Rentals" (the STR use in the use table also notes this requirement.) The amendments to the General By-law proposed under Article 10 establish this "Short-Term Rentals" section, which contains all the eligibility requirements, operational requirements, and safety requirements for short term rentals.

#### **Background**

Short-Term Rentals are a relatively new concept that has emerged from the convenience of online booking platforms. The most well-known of these platforms is AirBnB, though many others exist including VRBO, booking.com, and Homeaway. Although there is no exact data on the number of Short-Term Rentals being offered currently in Brookline (online platforms display listings in various formats that make this data very difficult to retrieve), data estimates show that the number could range between 300 to 400 units at any given time. As Short-Term Rental units have begun to proliferate in Brookline, it has become apparent that the Town currently has no regulations covering this topic. Despite the recent trend and shift towards short-term renting, the renting of rooms within units is not actually a new concept in Brookline. Use #51 has long appeared in the Zoning By-law's Table of Use Regulations. Use #51 allows residents to rent up to two bedrooms within their home for up to two lodgers (one per room) for single-occupancy stays. The language of Use #51 does not specify how long these lodgers may rent these rooms for. However, as Short-Term Rentals have gained popularity, the Building Commissioner has made the interpretation that Use #51 is intended for long-term lodgers (>30 days) rather than Short-Term Rental guests.

On December 28, 2018, the legislature approved 2018 Mass. Acts Ch. 337, "An Act Regulating and Insuring Short-Term Rentals" (the "Act"). The Act (which took effect on July 1, 2019) provides for the creation of a State registry of "operators" of certain types of lodging accommodations, including Short-Term Rentals. The Act amended the local option room tax to include Short-Term Rentals as among the lodging accommodations that are subject to the room tax. Municipalities such as the Town of Brookline that previously accepted the local option room tax do not need to take any additional steps to recoup the room tax from Short-Term Rentals. The Act also established certain safety and insurance requirements, while enabling Cities and Towns to enact local regulations, license/registration requirements, and health and safety inspections.

Whether there is a need to legalize and regulate STRs has been an intermittent discussion over several years with the Liquor License Review Committee, the Zoning By-Law Committee, and other Boards and Commissions in Town. Following meetings with the Zoning By-Law Committee in Fall 2018, most Committee members stated they thought that Town Meeting would favor legalizing some manner of Short-Term Rentals. However, they agreed with the staff's suggestion that further outreach should be done with a variety of voices, including property managers, condo associations, neighborhood associations, Short-Term Rental operators, hotels and inns, etc.

Focus groups were held including two sessions with Short-Term Rental operators (Summer 2019), a Brookline Neighborhood Alliance Public forum (October 2019), and a meeting with condo associations and property managers (November 2019). Additionally, one-on-one meetings in Fall of 2019 included a conversation with MASCO, two meetings with three of the Town's bed and breakfast operators, and multiple meetings with STARS of Boston.

### Planning Department Comments

Given that the operation of short-term rentals has long existed in Brookline and represents an important source of income for members of the community, the Planning Department believes that this use should be allowed. However, the rapid rise in its popularity due to platforms like AirBnB requires that the Town take steps to make sure that the operation of

short term rentals is safe, monitored, and limited in its negative externalities. The regulations proposed under Article 9, 10, and 11 accomplish this by ensuring that the operation of short term rentals does not impact the availability of year-round housing units (by prohibiting professionally-managed STRs and prohibiting units restricted for below market-rate housing from operating as STRs), ensuring that the operational impact of a short-term rental on abutting properties is limited (restrictions on the number of rental days per year, minimum rental periods, appeals process, registration), and ensuring that short term rentals provide a level of safety and information to its guests. The regulations have also been crafted by a staff team involving the Planning Department, Building Department, Fire Department, Police Department, Health Department, Town Counsel, and Select Board Office to ensure that the regulations satisfy any concerns related to each of those disciplines. Furthermore, the procedures for registration, inspections, and violations were drafted to prevent the oversight of short term rentals from overwhelming any of the relevant enforcing agencies.

#### Planning Board Recommendation

The Planning Board recognizes that the current status of short-term rentals in the Town is untenable, both in terms of their regulatory status and in terms of the impact of illegal STRs on surrounding properties. The Board therefore believes that a regulatory framework for STRs is necessary but also believes that the framework should be as restrictive as possible to ensure a steady approach to permitting STRs and to ensure impacts on abutting properties are mitigated as much as possible.

The Planning Board heard feedback from several members of the public during its public hearing (10-8-2020), both in support and in opposition of STR regulations (whether in the form submitted to the Warrant or in the form proposed by the Planning & Regulation Subcommittee of the Advisory Committee). Members of the public raised concerns with STR impacts on abutters and surrounding neighborhoods, housing availability and cost, hotel operations, and livability in small condominium buildings. Members of the public also raised concerns with the enforceability of STR regulations and the availability of loopholes for professionally managed units in the version of the regulations appearing in the Warrant.

Taking these comments into account, the Board ultimately felt that a measured approach to permitting STRs is recommended and that the version of the STR articles proposed by the Planning & Regulation Subcommittee of the Advisory Committee is the most reasonable solution to that end.

*The Planning Board therefore voted (3-1) to recommend favorable action on Article 9 (and its associated articles 10 and 11) as amended by the Planning & Regulation Subcommittee of the Advisory Committee (provided below) and with the further recommendation that a portion of the fees collected under these regulations be applied to funding enforcement efforts.*

ARTICLE xxARTICLE

Submitted by: Select Board

To see if the Town will amend the Zoning By-law as follows:

**1. By amending §2.19, “S” Definitions, as follows:**

**Inserting the following:**

1. Short-Term Rental (or “STR”) – The rental of a whole or portion of a dwelling for not more than 31 consecutive calendar days, and a) As defined by M.G.L. Chapter 64G, Sec. 1 and b) whose operations meets one of three category types as specified in the operator’s Certificate of Registration:

- a. Room Share Units - At a Short-Term Rental Operator’s Primary Residence, the operator is present in the unit during the rental and occupancy is limited to four guests.

- b. Home Share Units – At a Short-Term Rental Operator’s Primary Residence, the whole unit is available for a Short-Term Rental and no Short-Term Rental Operator(s) is/are present while the unit is being rented. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.

- c. Owner Adjacent Units - The Short-Term Rental Operator’s Primary Residence is within a two-family building as defined by Principle Uses 2, 3, 4, or 4A in the Table of Use Regulations. The Short-Term Rental Operator owns or has legal control over the Short-Term Rental Unit and at least 1 other unit within the building. The Short-Term Rental Operator is present on the property during the rental. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.

In accordance with M.G.L. Chapter 64G, Sec. 1, the term excludes properties that are, or that are required to be, licensed as a lodging house because lodgings are rented to four or more persons not within the second degree of kindred to the owner or operator. The term also excludes properties that are, or that are required to be, licensed as a hotel, motel, or bed and breakfast establishment.

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2. Short-Term Rental Operator – Any person operating a Short-Term Rental. An operator may be the owner or leaseholder of the Short-Term Rental Unit with the written permission from the lessor.
3. Short-Term Rental Unit – A whole or portion of a whole Dwelling Unit that is being offered as a Short-Term Rental.

**And increasing each subsequent section number by 3.**

**2. By amending §2.16, “P” Definitions, as follows:**

**Renumbering the five existing sections titled “PARKING GARAGE OR PARKING AREA, NON-RESIDENTIAL”, “PARKING GARAGE OR PARKING AREA, RESIDENTIAL”, “PORCH, ENCLOSED AND UNENCLOSED”, “PRIVATE CLUB OR LODGE”, and “PROFESSION, RECOGNIZED” as sections 1, 2, 3, 5, 6 respectively and inserting the following after “3. PORCH, ENCLOSED AND UNENCLOSED”:**

4. Primary Residence – Any property at which a resident resides for at least 183 days of the calendar year.

**3. By amending §4.07, Table of Use Regulations, as follows:**

Accessory Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<u>51C. Short-Term Rentals in possession of a valid Town Certificate of Registration and in accordance with §4.14 only.</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>

**4. By amending the Use Regulations by adding the following section, §4.14, Short-Term Rentals:**

**§4.14 – SHORT-TERM RENTALS**

**1. Purpose**

This section is intended to protect the health and safety of visitors and residents, ensure that the primary use of these properties remains as a residence, and to minimize the effect Short-Term Rentals have on the character and livability of residential neighborhoods and the well-being of surrounding residents.

## 2. Applicability

- a. The requirements of this section shall apply to any Short-Term Rental. No property shall be offered as a Short-Term Rental except in compliance with each of the provisions of this By-Law.
- b. This By-Law does not supersede any lease or condominium association's by-laws. Nothing in this By-Law shall be construed to make the Town responsible for compliance with or enforcement of a lease, condominium by-laws or other governing documents, or any contract or agreement to which the Town is not a party.

## 3. Requirements

Short-Term Rentals shall comply with all applicable federal, state, and local laws, regulations and codes, including, but not limited to, Town's General By-law entitled "Short-Term Rentals".

**These amendments to the Zoning By-law shall go into effect on January 1, 2021.**

**Or act on anything relative thereto.**

### PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the 2020 Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

The purpose of Article 9 is to define Short-Term Rentals and other related terms and to add Short-Term Rentals as an allowed use under the Table of Use Regulations of the Zoning By-law. The use would be allowed in all zoning districts but limited to the three types of Short-Term Rentals described under the new definition to be added to Section 2.19, and limited to Short-Term Rentals in possession of a valid Certificate of Registration and operating in accordance with a new Section 4.14. The new Section 4.14 is dedicated to Short-Term Rental uses and simply puts forth basic requirements for the use. The vast majority of the regulations pertaining to the operation of Short-Term Rentals would be added to the General By-law under Article 10. See the explanation under that Article for more information.

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SELECT BOARD'S RECOMMENDATION

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ADVISORY COMMITTEE'S RECOMMENDATION

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**XXX**



**ADVISORY COMMITTEE'S RECOMMENDATION  
ARTICLE 10**

Please see the report and recommendation for this article submitted under Article 9.

**By a vote of 13-10-3 the Advisory Committee recommends FAVORABLE ACTION on an amended and revised Warrant Article 10, as follows (insertions underlined, deletions ~~strikethrough~~):**

VOTED: The Town will amend the General By-laws by adding the following article: ARTICLE 5.11 Short-Term Rentals

**Section 5.11.1 PURPOSE**

The Town of Brookline adopts this Bylaw for the regulation and restriction of Short- Term Rentals within the Town in order to protect the health safety of renters and residents, and to provide a process through which certain properties that meet specific requirements and eligibility criteria may be registered with the Town of Brookline for use as Short-Term Rentals.

**Section 5.11.2 DEFINITIONS**

As used in this by-law, the following terms shall have the following meanings: "Enforcement Authority": As designated by Article 10.2 of the General By-Laws.

"Short-Term Rental", or "STR": The rental of a whole or portion of a Dwelling Unit ~~dwelling~~ for not more than 31 consecutive calendar days, ~~and a) As defined by M.G.L. Chapter 64G, Sec. 1, subject to the following limitations: the Dwelling Unit and b) whose operations meets one of three category types as specified in the operator's Certificate of Registration:~~

~~• Room Share Units — At a is the Short-Term Rental Operator's Primary Residence of the operator, the operator is physically present in the Dwelling Unit unit during the rental and occupancy is limited to a maximum of two rooms and four guests.~~

i. ~~Home Share Units — At a Short-Term Rental Operator's Primary Residence, the whole unit is available for a Short-Term Rental and no Short-Term Rental Operator(s) is/are present while the unit is being rented. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.~~

ii. ~~Owner Adjacent Units — The Short-Term Rental Operator's Primary Residence is~~

~~within a two-family building as defined by Principle Uses 2, 3, 4, or 4A in the Table of Use Regulations of the Town of Brookline Zoning By-law. The Short-Term Rental Operator owns or has legal control over the Short-Term Rental Unit and at least 1 other unit within the building. The Short-Term Rental Operator is present on the property during the rental. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.~~

In accordance with M.G.L. Chapter 64G, Sec. 1, the term excludes properties that are, or that are required to be, licensed as a lodging house because lodgings are rented to four or more persons not within the second degree of kindred to the owner or operator. The term also excludes properties that are, or that are required to be, licensed as a hotel, motel, or bed and breakfast establishment.

“Short-Term Rental Unit”: A whole or portion of a whole Dwelling Unit that is being offered as a Short-Term Rental.

“Short-Term Rental Operator”: Any person operating a Short-Term Rental. An operator may must be the owner or leaseholder of the Short-Term Rental Unit ~~with the written permission from the lessor.~~

“Primary Residence”: Any property at which a resident resides for at least 183 days of the calendar year.

### **Section 5.11.3 ELIGIBILITY/APPLICABILITY**

1. Any Short-Term Rental Operator seeking to establish a Short-Term Rental Unit must apply for and receive a Certificate of Registration, following the procedure set forth in Section 5.11.4. The following eligibility requirements shall apply to applicants seeking a Certificate:
  - a. The Short-Term Rental Unit cannot be subject to any local, state, or federal income-eligible or income-restricted program that is designated as below market rate housing.
  - b. The Short-Term Rental Unit shall not be subject to any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, stop work orders, or other requirements, laws or regulations that prohibit the Operator from offering the residential unit as a Short-Term Rental.
  - c. The Short-Term Rental Unit shall not be in arrears regarding any municipal or state taxes, fines or fees. Short-Term Rentals, Short-Term Rental Operators, and Short-Term Rental Certificates of Registration are subject to Article 4.7 of the Town’s General By-laws.

- d. The number of rooms offered as sleeping accommodations must be code compliant.
2. Except as may be provided in Section 5.11.4 with respect to condominium associations of four (4) or less units, ~~This By-law does not supersede any lease or~~ condominium association's by-laws. Nothing in this By-law shall be construed to make the Town responsible for compliance with or enforcement of a lease, condominium by-laws or other governing documents, or any contract or agreement to which the Town is not a party.

## **Section 5.11.4            REGISTRATION PROCEDURE AND SUBMISSION REQUIREMENTS**

1. In connection with an application for a Certificate of Registration, the operator shall provide to the Select Board's Office all documentation that the Office shall require, which may include, but not be limited to:
  - a. Any application fee, as may be determined by the Select Board.
  - b. Proof of Primary Residence, either by: 1) providing proof of enrollment in the Brookline residential tax exemption program; or 2) an income tax return for the current year and a recent utility bill both showing the current address of the operator as the address of the Short-Term Rental Unit; ~~or 3) a tenancy agreement along with a photo ID.~~
  - ~~c. If the Short-Term Rental Operator is not the owner of the property, written evidence that the owner of the property has consented to the operator's use of the property as a Short-Term Rental Unit.~~
  - c. Where a Short-Term Rental Unit is part of a condominium association, certification by the Short-Term Rental Operator's condominium association board that the operation of the Short-Term Rental complies with all applicable leases and/or condominium documents, bylaws, or other governing documents.
  - d. Where a Short-Term Rental Unit is part of a four (4) unit or less condominium association, certification by all unit owners in the Short-Term Rental Operator's condominium association that they consent to the operation of a Short-Term Rental.
  - e. Floor plan of the Short-Term Rental Unit indicating the specific rooms to be offered. The floor plan shall identify each room by a numerical or alphabetical

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identifier. The floor plan may be sketched by hand but should be legibly labelled with the numerical or alphabetical identifier and the use of that room (e.g., bedroom, living room, etc.). The floor plan should identify the rooms to be used as sleeping accommodations and the proposed maximum occupancy for each. An operator may be asked to resubmit a floor plan with amendments in the event it is unacceptable to the Town's inspectional departments for health and/or safety or code compliance reasons.

- f. Local Contact Information. When registering, a Short-Term Rental Operator must provide their name, address, home telephone number, cell phone number, and email address, as well as such contact information for a secondary contact. Such contact information should identify at least one individual with corresponding contact information (including an active telephone number at which the person will be reachable 24 hours a day) who can respond in person within two hours of contact by a Town official to any issue or emergency that arises during a Short-Term Rental.

- g. Such other information and documentation as the Select Board's Office may determine.

g-h. Within 14 days of the issuance of a Certificate of Registration, the Select Board Office shall mail notice of the Certificate of Registration to abutters (property owners, residents and tenants) within 300 feet of the Short-Term Rental Unit.

- 2. The initial issuance and renewal of a Certificate of Registration shall be subject to the applicant's compliance with applicable federal, state and local law, including this By-Law.
- 3. The Certificate of Registration shall be valid for a period of one (1) to five (5) years, as the Select Board's Office may determine. The Certificate of Registration shall include a registration number, and shall identify the type of Short-Term Rental, the specific rooms that may be used as sleeping accommodations, and the maximum occupancy for each such room and for the unit as a whole.
- 4. An operator may seek modification of a Certificate of Registration, including with regard to rooms to be used as sleeping accommodation and maximum occupancies, by submitting such documentation as may be required by the Select Board's Office in connection with such request. Modification of a Certificate of Registration is subject to

approval by the Town's Health, Building and Fire Departments, who may conduct a pre-approval health and safety inspection as necessary. No modification of a Certificate may effect a change to the type of Short-Term Rental for which the Certificate was issued.

5. Certificates of Registration are non-transferable. A Certificate of Registration shall be null and void upon a change in property owner or ~~STR operator~~ or upon any change in the Primary Residence of the Short-Term Rental Operator that makes the unit ineligible for operation as a Short-Term Rental under this By-law.
6. An Enforcement Authority may revoke, suspend or modify a Certificate of Registration for good cause. The Short-Term Rental Operator shall have the right to a hearing, or opportunity therefor, in connection with such action.
- ~~6. Should the Short-Term Rental Operator be issued three (3) or more violation notices within any twelve (12) month period under this article, or of any municipal ordinance, state law, or building code, the Certificate of Registration will be revoked. In such case, a new Certificate of Registration may only be re-issued after a public hearing before the Select Board, which may, impose additional conditions.~~
7. In the event an Enforcement Authority suspends or revokes an operator's right to operate an STR, the Town shall notify the Massachusetts Commissioner of Revenue of the suspension or termination.

#### **Section 5.11.5           INSPECTIONS**

Prior to approving an initial or renewed Certificate of Registration, and in connection with an annual or other inspectional schedule to be determined by the Town, the Health, Building and Fire Departments ~~may~~ shall conduct a health and safety inspection. Such inspections ~~may~~ shall be used to verify that each Short-Term Rental Unit:

1. Meets all building, health and fire code and regulatory requirements.
2. Meets all requirements of this By-Law and of any regulations promulgated pursuant to this By-law.

Inspections shall be made on week-days during normal Town business hours. In addition, inspections may be made at other times (including but not limited to evenings and weekends) to investigate complaints and/or concerns regarding non-compliance or health and safety issues. Inspections shall be conducted in conformity with applicable federal, state and local law. Facilities requiring re-inspection are subject to applicable re- inspection fees.

#### **Section 5.11.6           OPERATIONAL REQUIREMENTS FOR SHORT-TERM**

## RENTAL UNITS

1. No person shall operate a Short-Term Rental without a current Certificate of Registration pertaining to the Short-Term Rental Unit.
2. Short-Term Rentals shall comply with all applicable federal, state, and local laws, regulations and codes.
3. Except as may be otherwise specified by Select Board regulation promulgated pursuant to this By-Law, a Short-Term Rental Operator may offer his or her ~~Room Share Unit~~ Short-Term Rental Unit ~~or Home Share Unit~~ for up to 90 days per year. ~~A Short-Term Rental Operator may offer his or her Owner-Adjacent Unit for up to 180 days per year.~~
4. A Short-Term Rental must be operated consistent with the terms set forth on the Certificate of Registration and with applicable law, including, but not limited to, with regard to rooms to be used as sleeping accommodations, the maximum occupancy of each room, the maximum occupancy of the unit as a whole, and any other stated conditions.
5. The following must be included within each Short-Term Rental Unit:
  - a. Diagram indicating the location of all fire extinguishers, gas shut-off valves, fire exits and fire alarms inside the Short-Term Rental Unit as well as in the building, as well as an evacuation route(s) highlighted in red. The diagram shall be posted i) in each bedroom used as a Short-Term Rental, ii) on all egresses from the Short-Term Rental Unit, and iii) in common areas accessible to the Short-Term Rental Unit;
  - b. A conspicuously placed binder with, at a minimum, the following information:
    - i. Local contact information including the name, address, home and cell phone numbers and email address for the Short-Term Rental Operator as well as one additional contact person who shall be reachable 24 hours a day in the absence of the Operator,
    - ii. Instructions for disposal of trash and recycling pursuant to any applicable requirements established by the Town of Brookline and/or by the property owner or condominium association,
    - iii. Information about Brookline parking regulations, including overnight parking restrictions and designated parking areas for guests, and
    - iv. Copy of Certificate of Registration from the Select Board's Office;

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- c. Fire extinguisher(s) which shall be of type ABC 10lb., dry chemical commercial with a tag to be tested and serviced annually by certified service company. Within a single-family unit, or multiple-unit building where units do not share a common access corridor, there shall be at least one acceptable type fire extinguisher available to the occupant within the unit. Where multiple units share a common access corridor on the same floor, one extinguisher may service up to four units, and be located within the access corridor on the same floor in a location to be determined by the Fire Department;
- d. A hard-wired smoke/fire alarm system installed in accordance with M.G.L. Chapter 148 and NFPA 72; and
- e. Any other documentation required by the Select Board's Office to be distributed inside Units.

6. Public advertisements (online or in print) for a Short-Term Rental shall include in the advertisement the Town-issued registration number associated with the Short-Term Rental's Certificate of Registration. A Short-Term Rental Operator shall only use the name stated on the application for an initial or renewed Certificate of Registration in on-line or other listings of the Short-Term Rental Unit.

6.7. Any entity advertising Short-Term Rentals in the Town of Brookline shall provide the town with ownership and address information for those units.

7.8. A Short-Term Rental Operator must keep accurate records of their business including date(s) of rental, rental rates, names of customers and customers' contact information for a period of three (3) years, and make them available to the Town upon request consistent with applicable federal, state and local law.

8.9. A Short-Term Rental Operator shall notify the Select Board's Office of any change in the Operator's Primary Residence within two (2) weeks of any change.

9.10. Renting for durations of less than twenty-four (24) consecutive hours shall not be permitted.

10.11. Commercial meetings and uses are prohibited in Short-Term Rental Units.

### Section 5.11.7 REGULATIONS

The Select Board may issue regulations for the implementation of this By-law, including for the establishment of any appeal process, and for the establishment of a cap on the number of Certificates of Registration issued (including numerical caps by type of Certificate of Registration and by Zoning District).

**Section 5.11.8        FINES**

Any person violating this By-law shall be fined in the amount of \$300 for each violation. Each day of a continuing violation shall count as a separate violation.

**Section 5.11.9        REPORTING**

1. A list of Short-Term Rental Units with active Certificate of Registrations will be published on the Town website and updated at least monthly. Information must include address, Short-Term Rental type, Certificate of Registration effective and expiration dates, approved number of rooms and guests and any other restrictions.
2. A list of Short-Term Rental Unit violations will be published on the Town website and updated at least monthly. Information must include Certificate of Registration number, address, date of violation, type of violation, and dollar amount of fine.

**Section 5.11.910        EFFECTIVE DATE**

This By-law shall take effect on January 1, ~~2021~~2022.



ARTICLE xx ARTICLE

Submitted by: Select Board

**To see if the Town will amend the General By-laws by adding the following article:**

**ARTICLE 5.11  
Short-Term Rentals**

**Section 5.11.1 PURPOSE**

The Town of Brookline adopts this Bylaw for the regulation and restriction of Short-Term Rentals within the Town in order to protect the health safety of renters and residents, and to provide a process through which certain properties that meet specific requirements and eligibility criteria may be registered with the Town of Brookline for use as Short-Term Rentals.

**Section 5.11.2 DEFINITIONS**

As used in this by-law, the following terms shall have the following meanings:

“Enforcement Authority”: As designated by Article 10.2 of the General By-Laws.

“Short-Term Rental”, or “STR”: The rental of a whole or portion of a dwelling for not more than 31 consecutive calendar days, and a) As defined by M.G.L. Chapter 64G, Sec. 1, and b) whose operations meets one of three category types as specified in the operator’s Certificate of Registration:

- i. Room Share Units - At a Short-Term Rental Operator’s Primary Residence, the operator is present in the unit during the rental and occupancy is limited to four guests.
- ii. Home Share Units – At a Short-Term Rental Operator’s Primary Residence, the whole unit is available for a Short-Term Rental and no Short-Term Rental Operator(s) is/are present while the unit is being rented. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.
- iii. Owner Adjacent Units - The Short-Term Rental Operator’s Primary Residence is within a two-family building as defined by Principle Uses 2, 3, 4, or 4A in the Table of Use Regulations of the Town of Brookline Zoning By-

law. The Short-Term Rental Operator owns or has legal control over the Short-Term Rental Unit and at least 1 other unit within the building. The Short-Term Rental Operator is present on the property during the rental. Occupancy is limited to a single contract at a time and no more than six guests, to the extent permitted by State and local law, including this By-law.

In accordance with M.G.L. Chapter 64G, Sec. 1, the term excludes properties that are, or that are required to be, licensed as a lodging house because lodgings are rented to four or more persons not within the second degree of kindred to the owner or operator. The term also excludes properties that are, or that are required to be, licensed as a hotel, motel, or bed and breakfast establishment.

“Short-Term Rental Unit”: A whole or portion of a whole Dwelling Unit that is being offered as a Short-Term Rental.

“Short-Term Rental Operator”: Any person operating a Short-Term Rental. An operator may be the owner or leaseholder of the Short-Term Rental Unit with the written permission from the lessor.

“Primary Residence”: Any property at which a resident resides for at least 183 days of the calendar year.

### **Section 5.11.3 ELIGIBILITY/APPLICABILITY**

1. Any Short-Term Rental Operator seeking to establish a Short-Term Rental Unit must apply for and receive a Certificate of Registration, following the procedure set forth in Section 5.11.4. The following eligibility requirements shall apply to applicants seeking a Certificate:
  - a. The Short-Term Rental Unit cannot be subject to any local, state, or federal income-eligible or income-restricted program that is designated as below market rate housing.
  - b. The Short-Term Rental Unit shall not be subject to any outstanding building, sanitary, zoning, or fire code violations, orders of abatement, stop work orders, or other requirements, laws or regulations that prohibit the Operator from offering the residential unit as a Short-Term Rental.
  - c. The Short-Term Rental Unit shall not be in arrears regarding any municipal or state taxes, fines or fees. Short-Term Rentals, Short-Term Rental Operators, and Short-Term Rental Certificates of Registration are subject to Article 4.7 of the Town’s General By-laws.
  - d. The number of rooms offered as sleeping accommodations must be code compliant.

2. This By-law does not supersede any lease or condominium association's by-laws. Nothing in this By-law shall be construed to make the Town responsible for compliance with or enforcement of a lease, condominium by-laws or other governing documents, or any contract or agreement to which the Town is not a party.

**Section 5.11.4                      REGISTRATION PROCEDURE AND SUBMISSION  
REQUIREMENTS**

1. In connection with an application for a Certificate of Registration, the operator shall provide to the Select Board's Office all documentation that the Office shall require, which may include, but not be limited to:
  - a. Any application fee, as may be determined by the Select Board.
  - b. Proof of Primary Residence, either by: 1) providing proof of enrollment in the Brookline residential tax exemption program; 2) an income tax return for the current year and a recent utility bill both showing the current address of the operator as the address of the Short-Term Rental Unit; or 3) a tenancy agreement along with a photo ID.
  - c. If the Short-Term Rental Operator is not the owner of the property, written evidence that the owner of the property has consented to the operator's use of the property as a Short-Term Rental Unit.
  - d. Where a Short-Term Rental Unit is part of a condominium association, certification by the Short-Term Rental Operator's condominium association board that the operation of the Short-Term Rental complies with all applicable leases and/or condominium documents, bylaws, or other governing documents.
  - e. Floor plan of the Short-Term Rental Unit indicating the specific rooms to be offered. The floor plan shall identify each room by a numerical or alphabetical identifier. The floor plan may be sketched by hand but should be legibly labelled with the numerical or alphabetical identifier and the use of that room (e.g., bedroom, living room, etc.). The floor plan should identify the rooms to be used as sleeping accommodations and the proposed maximum occupancy for each. An operator may be asked to resubmit a floor plan with amendments in the event it is unacceptable to

the Town's inspectional departments for health and/or safety or code compliance reasons.

- f. Local Contact Information. When registering, a Short-Term Rental Operator must provide their name, address, home telephone number, cell phone number, and email address, as well as such contact information for a secondary contact. Such contact information should identify at least one individual with corresponding contact information (including an active telephone number at which the person will be reachable 24 hours a day) who can respond in person within two hours of contact by a Town official to any issue or emergency that arises during a Short-Term Rental.
  - g. Such other information and documentation as the Select Board's Office may determine.
2. The initial issuance and renewal of a Certificate of Registration shall be subject to the applicant's compliance with applicable federal, state and local law, including this By-Law.
3. The Certificate of Registration shall be valid for a period of one (1) to five (5) years, as the Select Board's Office may determine. The Certificate of Registration shall include a registration number, and shall identify the type of Short-Term Rental, the specific rooms that may be used as sleeping accommodations, and the maximum occupancy for each such room and for the unit as a whole.
4. An operator may seek modification of a Certificate of Registration, including with regard to rooms to be used as sleeping accommodation and maximum occupancies, by submitting such documentation as may be required by the Select Board's Office in connection with such request. Modification of a Certificate of Registration is subject to approval by the Town's Health, Building and Fire Departments, who may conduct a pre-approval health and safety inspection as necessary. No modification of a Certificate may effect a change to the type of Short-Term Rental for which the Certificate was issued.
5. Certificates of Registration are non-transferable. A Certificate of Registration shall be null and void upon a change in property owner or STR operator or upon any change in the Primary Residence of the Short-Term Rental Operator that makes the unit ineligible for operation as a Short-Term Rental under this By-law.

6. An Enforcement Authority may revoke, suspend or modify a Certificate of Registration for good cause. The Short-Term Rental Operator shall have the right to a hearing, or opportunity therefor, in connection with such action.
7. In the event an Enforcement Authority suspends or revokes an operator's right to operate an STR, the Town shall notify the Massachusetts Commissioner of Revenue of the suspension or termination.

#### **Section 5.11.5           INSPECTIONS**

Prior to approving an initial or renewed Certificate of Registration, and in connection with an annual or other inspectional schedule to be determined by the Town, the Health, Building and Fire Departments may conduct a health and safety inspection. Such inspections may be used to verify that each Short-Term Rental Unit:

1. Meets all building, health and fire code and regulatory requirements.
2. Meets all requirements of this By-Law and of any regulations promulgated pursuant to this By-law.

Inspections shall be made on week-days during normal Town business hours. In addition, inspections may be made at other times (including but not limited to evenings and weekends) to investigate complaints and/or concerns regarding non-compliance or health and safety issues. Inspections shall be conducted in conformity with applicable federal, state and local law. Facilities requiring re-inspection are subject to applicable re-inspection fees.

#### **Section 5.11.6           OPERATIONAL REQUIREMENTS FOR SHORT-TERM RENTAL UNITS**

1. No person shall operate a Short-Term Rental without a current Certificate of Registration pertaining to the Short-Term Rental Unit.
2. Short-Term Rentals shall comply with all applicable federal, state, and local laws, regulations and codes.
3. Except as may be otherwise specified by Select Board regulation promulgated pursuant to this By-Law, a Short-Term Rental Operator may offer his or her Room Share Unit or Home Share Unit for up to 90 days per year. A Short-Term Rental Operator may offer his or her Owner-Adjacent Unit for up to 180 days per year.

4. A Short-Term Rental must be operated consistent with the terms set forth on the Certificate of Registration and with applicable law, including, but not limited to, with regard to rooms to be used as sleeping accommodations, the maximum occupancy of each room, the maximum occupancy of the unit as a whole, and any other stated conditions.
5. The following must be included within each Short-Term Rental Unit:
  - a. Diagram indicating the location of all fire extinguishers, gas shut-off valves, fire exits and fire alarms inside the Short-Term Rental Unit as well as in the building, as well as an evacuation route(s) highlighted in red. The diagram shall be posted i) in each bedroom used as a Short-Term Rental, ii) on all egresses from the Short-Term Rental Unit, and iii) in common areas accessible to the Short-Term Rental Unit;
  - b. A conspicuously placed binder with, at a minimum, the following information:
    - i. Local contact information including the name, address, home and cell phone numbers and email address for the Short-Term Rental Operator as well as one additional contact person who shall be reachable 24 hours a day in the absence of the Operator,
    - ii. Instructions for disposal of trash and recycling pursuant to any applicable requirements established by the Town of Brookline and/or by the property owner or condominium association,
    - iii. Information about Brookline parking regulations, including overnight parking restrictions and designated parking areas for guests, and
    - iv. Copy of Certificate of Registration from the Select Board's Office;
  - c. Fire extinguisher(s) which shall be of type ABC 10lb., dry chemical commercial with a tag to be tested and serviced annually by certified service company. Within a single-family unit, or multiple-unit building where units do not share a common access corridor, there shall be at least one acceptable type fire extinguisher available to the occupant within the unit. Where multiple units share a common access corridor on the same floor, one extinguisher may service up to four units, and be located within the access corridor on the same floor in a location to be determined by the Fire Department;
  - d. A hard-wired smoke/fire alarm system installed in accordance with M.G.L. Chapter 148 and NFPA 72; and

- e. Any other documentation required by the Select Board's Office to be distributed inside Units.
- 6. Public advertisements (online or in print) for a Short-Term Rental shall include in the advertisement the Town-issued registration number associated with the Short-Term Rental's Certificate of Registration. A Short-Term Rental Operator shall only use the name stated on the application for an initial or renewed Certificate of Registration in on-line or other listings of the Short-Term Rental Unit.
- 7. A Short-Term Rental Operator must keep accurate records of their business including date(s) of rental, rental rates, names of customers and customers' contact information for a period of three (3) years, and make them available to the Town upon request consistent with applicable federal, state and local law.
- 8. A Short-Term Rental Operator shall notify the Select Board's Office of any change in the Operator's Primary Residence within two (2) weeks of any change.
- 9. Renting for durations of less than twenty-four (24) consecutive hours shall not be permitted.
- 10. Commercial meetings and uses are prohibited in Short-Term Rental Units.

#### **Section 5.11.7            REGULATIONS**

The Select Board may issue regulations for the implementation of this By-law, including for the establishment of any appeal process, and for the establishment of a cap on the number of Certificates of Registration issued (including numerical caps by type of Certificate of Registration and by Zoning District).

#### **Section 5.11.8            FINES**

Any person violating this By-law shall be fined in the amount of \$300 for each violation. Each day of a continuing violation shall count as a separate violation.

#### **Section 5.11.9            EFFECTIVE DATE**

This By-law shall take effect on January 1, 2021.

**Or act on anything relative thereto.**

### PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis the Select Board voted to pursue a limited warrant for the 2020 Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

The purpose of Article 10 is to create regulations allowing for Short-Term Rentals in Brookline under a specific set of circumstances and to establish policies and procedures that operators of Short-Term Rentals must follow. These regulations also provide a basis on which health and safety rules can be enforced.

#### **What are Short-Term Rentals and why are they relevant to Brookline?**

Short-Term Rentals are a relatively new concept that has emerged from the convenience of online booking platforms. The most well-known of these platforms is AirBnB, though many others exist including VRBO, booking.com, and Homeaway. Although there is no exact data on the number of Short-Term Rentals being offered currently in Brookline (online platforms display listings in various formats that make this data very difficult to retrieve), data estimates show that the number could range between 300 to 400 units at any given time. The term "Short-Term Rental" can have numerous interpretations, but the Commonwealth of Massachusetts has defined it as an occupied property that is not a hotel, motel, lodging house or bed and breakfast establishment, where at least 1 room or unit is rented out by an operator through the use of advance reservations. A Short-Term Rental may include an apartment, house, cottage, or condominium. It does not include property that is rented out through tenancies at will or month-to-month leases. It also does not include time-share property. A Short-Term Rental is a rental that is not for more than 31 consecutive calendar days.

Brookline's geographic location close to Boston leads to a high demand for visitors seeking Short-Term Rental accommodations and visitors have ranged from patients seeking medical visits and treatment at Longwood Medical Area, medical professionals coming to do research or residency programs at area hospitals, families coming to tour local colleges, business professionals attending work conferences, tourists, etc., as described by current Brookline hosts. The demand for Short-Term Rentals in Brookline appears to be very high and this demand has been met by many Brookline residents who have interest in renting out their homes, or portions of their homes, as Short-Term Rental units.

#### **What is the status of Short-Term Rentals in Brookline today?**

As Short-Term Rental units have begun to proliferate in Brookline, it has become apparent that the Town currently has no regulations covering this topic. A lack of



regulations has led to uncertainty surrounding this subject and a lack of clarity for Short-Term Rental hosts, Brookline residents who are not hosts, guests, and Town officials and staff. Brookline's Zoning By-law contains Table 4.07, Table of Use Regulations, which outlines all allowed uses. This table is inclusive only, meaning that only the uses explicitly listed in the table are allowed and any use not explicitly allowed in the table is not allowed. This interpretation of the use table is currently used by the Building Commissioner when he makes interpretations of allowed uses in Brookline.

Because the Zoning By-law is silent on the topic of Short-Term Rentals, they are currently considered prohibited in Brookline. However, the Town's ability to enforce this has been limited because there is no written explanation of the Town's stance towards Short-Term Rentals. The Zoning By-law's silence on this topic has made enforcement and regulation very difficult. Currently, the Building Department is handling enforcement on a complaint-driven basis. In speaking to current Short-Term Rental hosts, nearly all were unaware that Brookline prohibited such a use because there is no written language codifying this stance and information regarding this prohibition is not searchable or findable.

Despite the recent trend and shift towards short-term renting, the renting of rooms within units is not actually a new concept in Brookline. Use #51 has long appeared in the Zoning By-law's Table of Use Regulations. Use #51 allows residents to rent up to two bedrooms within their home for up to two lodgers (one per room) for single-occupancy stays. The language of Use #51 does not specify how long these lodgers may rent these rooms for. However, as Short-Term Rentals have gained popularity, the Building Commissioner has made the interpretation that Use #51 is intended for long-term lodgers rather than Short-Term Rental guests. Therefore, currently, a resident who may be renting out up to two bedrooms within their home may do so but only for long-term tenants which would be a tenant staying longer than 31 consecutive days. Any resident who may be allowing lodgers to stay in bedrooms within their unit for 31 days or less would currently be in violation of the Zoning By-law, although it does not state in writing anywhere that this distinction exists.

The Town is therefore aware that the renting of rooms within one's unit exists in Brookline and has been practiced by some residents for many decades. The ease with which residents can now connect with interested short-term guests has only continued to gain popularity due to the ease of popular platforms such as AirBnB. As stated above, data estimates show that as many as 400 units may be currently offered for short-term rent, though this number would include people renting out entire units and not solely bedrooms within units.

### **What will these regulations allow or not allow?**

Creating Short-Term Rental regulations will set forth policies covering a few main areas: 1) the types of units eligible to be listed as Short-Term Rentals (any unit type that does not follow under one of the types listed cannot be registered as a Short-Term Rental), 2) a

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registration process for Short-Term Rental operators to provide information to the Town, proof of compliance, a fee and a required in-unit inspection, 3) requirements hosts (aka “operators) of Short-Term Rentals must follow in the operation of their units and 4) policies for complaints, enforcement and violations.

The proposed amendments to the General By-law and Zoning By-law will allow three types of Short-Term Rentals. The first type is the renting of a room within the operator’s primary residence (defined as the dwelling unit where the operator resides for at least 183 days per year) while the operator is present in the unit. The second type is the renting of an entire dwelling unit while the operator is not present in the unit. The third type is the renting of an entire unit in a 2-family building where the operator resides in one of the other units and is present during the rental. There are additional restrictions on these types including limits on the number of guests at any given time. A fourth type of Short-Term Rental was explicitly left out of the proposed regulations (and would therefore remain prohibited): professionally-managed units. Professionally-managed units are units that are not the primary residence of the operator nor does the operator live in the building. Typically, operators of professionally-managed units manage a portfolio of units in several different buildings. These types of Short-Term Rentals would be prohibited primarily because of their negative impact on the availability of year-round housing units if they were permitted.

Any operator who wishes to engage in one of the three allowed types of Short-Term Rentals described above would be required to file for a Certificate of Registration. Along with an application for the Certificate, any operator would be required to submit a variety of documents, including but not limited to, a proof of primary residence, floor plans, contact information, and proof of compliance with applicable leases and/or condominium documents. The registration process would be handled by the Select Board’s Office and prior to the issuance of any Certificate for a Short-Term Rental, inspections would be conducted by the Health Department, Fire Department, and Building Department. These inspections would confirm the eligibility of the unit for the operation of a Short-Term Rental and inform any additional conditions the Select Board Office might see fit to attach to the Certificate. The proposed regulations require that all Short-Term Rentals include a variety of safety-related items, including hard-wired smoke alarms and fire extinguishers, diagrams showing the location of safety equipment, and information on trash disposal and parking regulations. The proposed regulations also allow for the revocation of Certificates if violations are found or for other good causes, and allow for the Select Board to issue further regulations for the implementation of the By-law, including for the establishment of any appeal process.

It is important to note that the Town would like to ensure that only operators of Short-Term Rentals who have permission to operate are able to do so. Without any current regulations, the Town has very little control over who operates a Short-Term Rental. It is also important to note that even with the proposed Short-Term Rental regulations in place, the requirements of a condominium association through its by-laws or condo documents and the provisions of a rental lease always supersede these regulations.

In listening to public feedback, Town staff and officials have heard that many condominiums in Brookline, for example, do not have condominium documents that address the topic of Short-Term Rentals and therefore cannot be used to prevent such activity within the building. Many condo documents and by-laws were drafted prior to the popularity of Short-Term Rentals. The Town would recommend to any condominium association that is concerned with how it will regulate Short-Term Rentals review its condo documents and update them to explicitly reflect its desired policy on how it will treat individual unit owners who may wish to register a Short-Term Rental unit.

### **What about the negative impacts of Short-Term Rentals?**

In Spring 2018, the Planning Department worked with AirBnB to create a survey available to Brookline AirBnB hosts asking to collect information on hosts' experiences. The survey sought to better understand why hosts are renting out their units (or parts of their units), how they benefit from being a host, how they operate their Short-Term Rental, any concerns or negative experiences they have had and any thoughts they had on potential regulations. A total of 46 Short-Term Rental Operators responded to the survey, which was linked to the AirBnB host platform website as well as on the Planning Department's website. The results provided insight into the landscape of existing Short-Term Rentals in Brookline. The Town did not use any information collected from operators to issue violations or enact enforcement against operators. 76% of respondents stated that they use the extra income from short-term renting to pay their mortgage/rent and 43% responded that they use it to pay student loans or save for education. 41% responded that they use the income for repairs to their home.

Currently, any Short-Term Rental operating in Brookline is operating in violation of zoning, despite the fact that most hosts are unaware of this. The Building Commissioner is handling violations on a complaint-driven basis and the number of overall complaints has been relatively low. Since 2015, the total number of complaints submitted against a Short-Term Rental operator has been approximately 30. The nature of these complaints has included the operation of a business, violation of condo rules and regulations, and questions about whether Short-Term Rentals are legal in Brookline.

The number of overall complaints against Short-Term Rentals has been low (particularly compared to the overall estimate of total units) but has allowed the Town to gain an understanding of the most common complaints and negative impacts arising from Short-Term Rentals. The Town recognizes that the operation of Short-Term Rentals, particularly in large quantities, is not without negative impacts on neighbors and neighborhoods. The most common issues that have been brought to the attention of Town staff and officials have included late-night and early-morning arrivals, trash disposal, knocking on the wrong door, car doors slamming at odd hours, and noises in halls and corridors.

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Staff has also recognized that without any regulations in place, it's not possible to set out specific requirements for rules and guidelines that all Short-Term Rentals hosts must follow and to enforce such rules accordingly. A benefit of setting up regulations is that it allows the Town to establish robust requirements for Short-Term Rental operators which it currently lacks in any form.

### **Why change the status quo?**

Although Short-Term Rentals have been operating in Brookline for some time without regulation and with a relatively low number of official complaints, the Town has numerous reasons for enacting regulations in a timely manner.

The first and most important reason is in response to action at the State level. On December 28, 2018, the legislature approved 2018 Mass. Acts Ch. 337, "An Act Regulating and Insuring Short-Term Rentals" (the "Act"). The Act (which took effect on July 1, 2019) provides for the creation of a State registry of "operators" of certain types of lodging accommodations, including Short-Term Rentals. The Act amended the local option room tax to include Short-Term Rentals as among the lodging accommodations that are subject to the room tax. Municipalities such as the Town of Brookline that previously accepted the local option room tax do not need to take any additional steps to recoup the room tax from Short-Term Rentals. The Act also established certain safety and insurance requirements, while enabling Cities and Towns to enact local regulations, license/registration requirements, and health and safety inspections.

As a result of this new legislation, the State is now collecting a state excise tax of 5.7% as well as a local option room tax of 6.0% from all operators of Short-Term Rentals. This tax will then be remitted to the municipality in the same way the current room tax is collected and remitted for hotels, bed and breakfasts, etc. Effective July 1<sup>st</sup>, 2019, Brookline Short-Term Rental hosts must register with the State and begin reporting and submitting this tax to the Department of Revenue (platforms such as AirBnB will do this for the operator) and shortly thereafter, Brookline will begin receiving the collected taxes. Town staff believes that it is undesirable for the Town to be collecting tax on a use that is currently prohibited in Brookline and that in order to reasonably justify the benefits being received from this tax collection, the Town should put in place regulations to allow Short-Term Rentals in a way that will encourage operators to register their units with the State and submit the proper taxes accordingly.

Second, surrounding communities have adopted regulations for Short-Term Rentals. Cambridge adopted regulations in Spring 2017, Boston adopted their own set of regulations in Summer 2018, Somerville passed regulations in Spring 2019, and Newton has passed regulations in September 2019. With all surrounding communities having either established or considering establishing regulations, Brookline has numerous models to look to for precedent on what has been successful in communities that have similar landscapes, as well as similar challenges when it comes to the popularity of Short-Term Rentals. With many Short-Term Rental options in the region, Brookline should

seek to remain competitive in this market, while maintaining a balance of strict regulation, as other communities have. Another benefit to the town from Short-Term Rentals is likely the impact on business and retail – many Short-Term Rental guests eat and shop in our business districts during their stays in Brookline. 87% of hosts who responded to the survey stated that they provide their guests with a local business guide to shops and restaurants that direct guests to get out and explore everything Brookline has to offer.

Third, by regulating the landscape of Short-Term Rentals, Brookline will be able to control numerous aspects of the Short-Term Rental market that it currently is unable to. There are some types of Short-Term Rentals that are less desirable and that the Town would not like to see continue to operate within Brookline. Currently, without regulations, any type of Short-Term Rental is able to operate unless a formal complaint has been filed against the operator. Specifically, Brookline would like to ensure that Short-Term Rentals do not have any negative impacts on the housing stock and the rental market. These negative market impacts take place when Short-Term Rental operators who are not the primary resident purchase units that they do not reside in for the sole purpose of renting them out as Short-Term Rentals. These types of units are often referred to as “professionally managed,” which means an off-site manager manages the unit and the bookings but does not reside within the unit or the building. Investors can purchase numerous units across Brookline for this purpose, or even an entire building. This type of Short-Term Rental results in apartment units that would otherwise be available for long-term leases being removed from the rental market and makes them unavailable to people looking for permanent housing in Brookline. This type of unit model would be prohibited under these regulations.

Lastly, regulations will allow the Town to set up a mechanism to monitor, track and enforce against both units that have not followed the required registration process AND units who have registered but are not following the required provisions. Currently, due to the unclear nature of the Town’s regulations, enforcement against Short-Term Rental options has been challenging. There are no specifications on what Short-Term Rental hosts can and cannot do and there are no specific penalties in place, because Brookline is currently silent on the topic overall. By explicitly setting forth rules and regulations pertaining solely to this use, the Town will be in a much stronger position to take action against any operators that are not following protocol.

#### **Are there any financial impacts to the Town?**

Staff of the Select Board Office, Planning Department, Building Department, Health Department, and Fire Department all contributed to the drafting of this warrant article. One of the drafting priorities was ensuring that the proposed regulations would not impose a heavy burden on any of the involved departments. The cost of initial inspections conducted by the Building Department, Health Department, and Fire Department will be included in the application fee for a Certificate of Registration and any additional necessary inspections will involve a re-inspection fee. The processing of applications will

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be handled by an existing employee of the Select Board's Office that currently handles the licensing process for other uses. Therefore, Town staff does not expect the proposed regulations to incur significant additional costs, and any costs that are incurred will be more than accounted for by the room tax received from the state and the application fee, which the Select Board can adjust at will.

**What kind of outreach has the Town done to create these regulations in a way that is fair to all stakeholders?**

Town staff has made strong efforts to learn about the existing practice of (usually illegal) short-term rentals in Brookline by reaching out to a wide group of stakeholders to gain feedback and a nuanced understanding on the various positions towards Short-Term Rentals.

Whether there is a need to legalize and regulate STRs has been an intermittent discussion over five years with the Liquor License Review Committee, the Zoning By-Law Committee, and other Boards and Commissions in Town. Following meetings with the Zoning By-Law Committee in Fall 2018, most Committee members stated they thought that Town Meeting would favor legalizing some manner of Short-Term Rentals. However, they agreed with the staff's suggestion that further outreach should be done with a variety of voices, including property managers, condo associations, neighborhood associations, Short-Term Rental operators, hotels and inns, etc.

When the state law passed regarding rooms tax for short-term rentals in Winter 2018, the Select Board Chair requested staff immediately work on a zoning by-law that would legalize short-term rentals on an interim basis. However, we did not move forward submitting a by-law to Town Meeting for two reasons: doing so could create "grandfathered" nonconforming uses if and when additional study and analysis led to a Town Meeting vote that restricted or banned some types of short-term rentals in Brookline. Additionally, the state legislation did not require municipalities to legalize the use prior to collecting tax revenue from those operators that self-registered with the state.

Focus groups included two sessions with Short-Term Rental operators (Summer 2019), a Brookline Neighborhood Alliance Public forum (October 2019), and a meeting with condo associations and property managers (November 2019).

Additionally, one-on-one meetings in Fall of 2019 included a conversation with MASCO, two meetings with three of our bed and breakfast operators, and multiple meetings with STARS of Boston. Below are summaries of those discussions and the positions of those stakeholders:

Short-Term Rental Operators: Most hosts have been interested in speaking with staff and are in support of regulations because they would like to be able to operate legally and do not want to be in fear of shutting down. Some hosts have already been shut down and would like to be able to operate in the future. Some hosts only host guests for greater than

30 days and would therefore not be subject to these regulations. However, those that host guests for shorter amounts of time have seemed generally receptive of regulations including the proposed fees, inspection and registration process. They would like as few limitations as possible. Many operators are seniors or empty nesters who rely on this income to stay in their homes.

Innkeepers: Three innkeepers stated that AirBnB/other platforms are not their competition and not a main concern. Some of these inns use AirBnB to advertise their own rooms. Larger concerns for their businesses are the online comparison booking sites like Expedia or Hotels.com where prices are compared between various accommodations and they are rarely the least expensive and thus lose business. Additionally, they are very interested in pursuing with the Town ways that they could be regulated more like Short-Term Rentals than lodging houses – especially their current requirement to have a room dedicated for an “on-site manager” 24 hours/day. If Short-Term Rentals were legalized, they thought that the Town would likely have more resources and prioritization to regulate these operations. They would like for smaller inns to be regulated and taxed at the same rate as short-term rentals.

Brookline Neighborhood Association: The BNA did not make any specific comments or input on the regulations.

STARs: STARs is a business operating in Brookline and surrounding areas that manages numerous units and connects STR guests with units for stays often relating to medical treatment at local hospitals. STARs manages these units and provides cleaning, servicing, etc. (including the new jobs created that came with this business model). However, because STARs professionally manages these unit and is NOT the primary resident or owner of any of them, they would not be allowed to operate under the proposed regulations. Due to their close network with many property managers in Town, staff has suggested numerous ways that STARs could adjust their business model to identify a primary resident AND still charge an operating/permitting/cleaning/advertising fee to rent the space out when the primary resident is not using the space. Alternatively, STARs could help broker and manage apartments that are leased to a corporate entity (such as traveling nurses’ associations). Additionally, STARs has told us they are working with individual Council members in Cambridge and Boston to provide an exemption for uses associated and supporting medical patients and the Longwood Medical Area; no specific legislation has yet been proposed that we are aware of. Staff is concerned about the practical ability for Town enforcement operations to discern Short-Term Rental operators that are servicing medical patients.

Condo Owners and Property Managers: Numerous residents expressed concern with how property managers who oversee condo associations would deal with Short-Term Rentals. Short-Term Rental regulations will NOT supersede condo by-laws/policies. The informational meeting was helpful to those condo owners and property managers, and a local attorney offered some specific suggestions for how condo associations could handle STRs (whether or not they are legalized in Brookline). Additionally, the group suggested

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that the language should not rely on definitions such as “primary residence” and instead include the number of days/year that a rental can occur.

From this outreach, the proposed draft legislation changed primarily in the following three ways:

- Creation of specific public health and fire safety regulations within the registration process beyond those otherwise necessarily required in the Building Code
- Allowance for renters to also be able to host short-term rentals (not just property owners)
- Addition of limit on number of days a short-term rental can be rented
- Limitation of owner-adjacent units to 2-family buildings
- Increased minimum rental period to 24 hours
- Required that condo association board certify that STRs are allowed under the condominium documents



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## SELECT BOARD'S RECOMMENDATION

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## ADVISORY COMMITTEE'S RECOMMENDATION

**XXX**

ARTICLE xX ARTICLE

Submitted by: Select Board

**To see if the Town will amend Article 10.2 (Prosecutions and Enforcement) of the General By-Laws as follows (additions are in bold underlining):**

**ARTICLE 10.2  
PROSECUTIONS AND ENFORCEMENT**

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following bylaws and articles shall be by the following department head or their designees:

<u>DEPARTMENT HEAD</u>	<u>ARTICLE</u>
<b>BUILDING COMMISSIONER</b>	
Part V – Private Property	Articles 5.2, 5.3, 5.4 5.6, 5.7, 5.8, <b><u>5.11</u></b>
....	
<b>DIRECTOR OF HEALTH &amp; HUMAN SERVICES</b>	
Part V – Private Property	Articles 5.1, 5.2, 5.4, 5.5, 5.7, <b><u>5.11</u></b>
<b>FIRE CHIEF</b>	
<b><u>Part V – Private Property</u></b>	<b><u>Articles 5.11</u></b>
....	
<b><u>TOWN ADMINISTRATOR</u></b>	
<b><u>Part V – Private Property</u></b>	<b><u>Articles 5.11</u></b>

**Or act on anything relative thereto.**

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## PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the 2020 Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

The purpose of Article 11 is to establish the Building Commissioner, Director of Health and Human Services, the Fire Chief, and the Town Administrator as enforcement agencies as it relates to the proposed Article 5.11 (Short-Term Rentals). It should be noted that the Police Department is, by default, an enforcing agency for Article 5.11. Further information on the proposed Article 5.11 can be found under Article 10.

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SELECT BOARD'S RECOMMENDATION

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ADVISORY COMMITTEE'S RECOMMENDATION

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**XXX**

ARTICLE xX ARTICLE

Submitted by: Moderator's Committee on Elderly Tax Relief, contact Susan Granoff

To see if the Town will authorize and empower the Select Board to file a petition, in substantially the following form, with the General Court for a special act authorizing the Town of Brookline to establish a means-tested senior citizen property tax exemption similar to the Town of Sudbury's Means-Tested Senior Citizen Tax Exemption but which is restricted to qualifying seniors who do not also qualify for the Town of Brookline's Senior Tax Deferral Program.

# AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ESTABLISH A MEANS-TESTED SENIOR CITIZEN PROPERTY TAX EXEMPTION

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. With respect to each qualifying parcel of real property classified as Class one, residential in the town of Brookline, there shall be an exemption from the property tax equal to the total amount of the tax that would otherwise be assessed without this exemption less the sum of (i) 10 percent of the total annual qualifying income for purposes of the state's "circuit breaker" credit income tax credit under subsection (k) of section 6 of chapter 62 and (ii) the amount of the state's "circuit breaker" credit the applicant was eligible to receive in the year prior to the application being filed. The percentage of total annual qualifying income may be raised by section 3. In no event shall this exemption reduce property taxes by more than 50 percent of the property taxes due after the application of the town's residential exemption. The exemption shall be applied to the domicile of the taxpayer only. For the purposes of this act, "parcel" shall be a unit of real property as defined by the assessors under the deed of the property and shall include a condominium unit.

SECTION 2. The board of assessors may deny an application if they find the applicant has excessive assets that place them outside of the intended recipients of the senior exemption created by this act. Real property shall qualify for the exemption under section 1 if all of the following criteria are met:

(a) the qualifying real property is owned and occupied by a person whose prior year's income would make the person eligible for the circuit breaker income tax credit under subsection (k) of section 6 of chapter 62 of the General Laws;

(b) the qualifying real property is owned by a single applicant age 65 or older at the close of the previous year or jointly by persons either of whom is age 65 or above at the close of the previous year and if the joint applicant is 60 years of age or older;

(c) the qualifying real property is owned and occupied by the applicant or joint

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applicants as their domicile;

(d) the applicant or at least one of the joint applicants has been domiciled in the town of Brookline for at least 10 consecutive years before filing an application for the exemption;

(e) the maximum assessed value of the domicile is no greater than the prior fiscal year's average assessed value of a Brookline residential parcel assigned state use codes 101 (single-family home) and 102 (condominium) plus 10 percent; and

(f) the board of assessors has approved the application.

SECTION 3. The exemption under section 1 shall be in addition to any other exemption allowable under the General Laws, except that there shall be a dollar cap on all the exemptions granted by this act equal to 0.25 percent of the fiscal year's total residential property tax levy for the town of Brookline with the total exemption amount granted by this act allocated proportionately within the tax levy on all residential taxpayers. After the first year of such exemption, the total cap on the exemptions granted by this act shall be set annually by the select board within a range of 0.25 to 1 percent of the residential property tax levy for the town of Brookline. In the event that benefits to the applicants may be limited because the percentage established annually by the select board would otherwise be exceeded, the benefits shall be allocated by raising the total annual qualifying income percentage as required in section 1 as necessary to not exceed the cap. In the event the cap exceeds the need for the exemption, any undistributed amounts collected shall be returned to the town.

SECTION 4. A person who seeks to qualify for the exemption under section 1 shall, before the deadline established by the board of assessors, file an application, on a form to be adopted by the board of assessors, with the supporting documentation of the applicant's income and assets as described in the application. The application shall be filed each year for which the applicant seeks the exemption.

SECTION 5. No exemption shall be granted under this act for any year if an applicant otherwise meets all the qualifications in sections 1, 2, 3, and 4 of this act and also meets all the qualifications of the town of Brookline's Senior Tax Deferral Program for that year, including obtaining the written approval by all persons having a legal interest in the applicant's parcel as required by the town's Tax Deferral and Recovery Agreement. Applicants shall, in good faith, seek to qualify for the town's Senior Tax Deferral Program. A finding that an applicant has not done so shall be grounds for denying the property tax exemption provided by this act.

SECTION 6. This act (or only section 5 of this act) may be revoked by an affirmative vote of a majority of Town Meeting at any annual or special Town Meeting. Revocation of sections 1 to 5, inclusive, and sections 6 and 7, or section 5 only, shall take effect 30 days after an affirmative vote of Town Meeting.

SECTION 7. No exemption shall be granted under this act until the department of revenue certifies a residential tax rate for the applicable tax year where the total

exemption amount is raised by a burden shift within the residential tax levy.

The General Court may make such amendments as are within the scope of the general public objectives of this petition. Or act on anything relative thereto.

#### PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of what was filed for the Annual Town Meeting.

This warrant article is the result of nearly two years of work by the Moderator's Committee on Elderly Tax Relief, which was created by a vote of the 2018 Annual Town Meeting. The Committee was asked to investigate ways to use Brookline's tax policies to deal with the dilemma faced by those elderly Brookline homeowners on fixed incomes who are finding it increasingly difficult to pay their rising property taxes and yet still want to continue living in their Brookline home; to study the extent of need among Brookline's senior homeowners; to identify those senior homeowners who especially needed additional property tax relief; to develop one or more new, fiscally responsible programs that went beyond existing Brookline senior tax relief programs in order to help needy seniors who were not being helped (or helped enough) by current town programs; and to report back to Town Meeting.

The new program that the Committee is proposing in this warrant article is modeled after the highly successful Means-Tested Senior Tax Exemption program that has been in effect in Sudbury since 2014, but Brookline's program would have one additional qualification requirement.

The proposed program would work as follows:

No Brookline senior homeowner who qualified would be required to pay property taxes on their home or condo greater than 10 percent of their total household income so long as they paid at least 50 percent of their total property tax bill after application of the Town's residential exemption.

In order to qualify:

- The residence must be owned and occupied by an age 65 or older senior whose prior year's income would make the person eligible for the Massachusetts Circuit Breaker Income Tax Credit (*currently, the qualifying incomes for the Tax Year 2019 Circuit Breaker Tax Credit are \$60,000 for a single senior taxpayer,*



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*\$75,000 for a head of household, and \$90,000 for a married couple filing jointly);*

- If there is a joint owner, the joint owner must be at least 60 years of age;
- The applicant or joint owner must have resided in Brookline for at least ten consecutive years;
- The assessed value of the domicile is no greater than the prior year's average assessed value of a Brookline single-family residence (including both condos and single-family homes) plus 10 percent (*currently, that assessed value cap would be \$1,340,992*);
- The applicant must not own “excessive assets” that place the applicant outside of the intended recipients of this exemption;
- The application must be timely filed and complete; and
- The applicant must be unable to qualify for Brookline's Senior Tax Deferral for that year.<sup>1</sup>

Most senior homeowners who are likely to qualify for the new program would also likely qualify for the Town's Senior Tax Deferral Program. The one probable exception are those senior homeowners who have a conventional mortgage on their home. This is because the town is required by state law to hold a first lien on a Tax Deferral Program participant's home, while, under federal law, banks and other mortgage holders are required to hold first lien on all properties with conventional mortgages that are sold on the secondary market, and neither may waive this requirement. As a result, these senior homeowners are unable to obtain the written approval to participate in the Tax Deferral Program from all persons having a legal interest in their property that is required by the Tax Deferral and Recovery Agreement, the contract between the Town and each Tax Deferral Program participant.

Based on the Committee's analysis of micro-data collected by the American Community Survey (a part of the US Census Bureau), during the years 2013-2017, an estimated 100 Brookline senior homeowner households with low and modest incomes likely would have been unable to participate in the Town's Senior Tax Deferral Program because their home had a conventional mortgage. Additional data indicates that approximately 90% of these households were spending 50% or more of their total household income on housing costs, a percentage that is considered by most economists to be a sign of serious financial

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<sup>1</sup> A majority of the Committee wanted to add the Tax Deferral requirement because they strongly believe that, if a senior homeowner can qualify to participate in the Town's Tax Deferral Program and thereby tap into the appreciated value of their home, the Town should not grant that senior homeowner any exemption. A minority of the Committee (40 percent) disagreed with what they considered to be an unduly restrictive requirement and would have preferred that the proposed program not include this added qualification.

distress.

The proposed new program would be revenue neutral; it would not increase the Town's total revenues, costs, or budget. It would authorize a reduction in real property taxes for certain low to moderate income seniors which would be offset by a modest redistribution of the property tax burden within the residential class, resulting in a very small increase in the residential tax rate from 0.25 percent (a quarter of 1 percent) in the first year of the program's operation to between 0.25 percent to 1 percent in subsequent years, as set by the Select Board each year. Based on the town's current (FY2020) residential tax levy of \$196,322,386, a 0.25 increase would result in an annual property tax bill increase of \$11 for the median assessed-value condo and an increase of \$34 for the median assessed-value single-family home. The costs of the new exemption program would be unlikely to require more than a 0.25 surcharge. Any excess amount raised in any year that was not distributed as exemptions under the proposed program would be returned to the town.

We estimate that ultimately a maximum of about 100 Brookline seniors might qualify and that the maximum total amount of the exemptions granted would be about \$490,000, which would be equal to 0.25 percent of the town's current residential tax levy.

#### EXPLANATION

One of the many qualities that makes Brookline so special is that we as a community value diversity in all of its many forms, including age and economic diversity. We pride ourselves on being a community that values its senior residents, many of whom have contributed enormously to Brookline during the decades that they have lived here and many of whom continue to make invaluable contributions to our community, through their hundreds of hours of volunteer activities and the historical memory that our long-term Brookline residents provide. For this reason, the Town and various organizations such as Brookline's Council on Aging, the Brookline Community Aging Network, and the Senior Center have worked to provide programs that make it easier for our senior residents to age in place. These are some of the reasons that Brookline has been designated as an internationally recognized "age-friendly" community.

But, even in a generally affluent town such as Brookline, there are hundreds of seniors who are having increasing difficulty paying their real estate taxes. Many purchased their homes or condos decades ago, when they were employed full-time and their household incomes were much higher (and Brookline real estate taxes and fees were much lower). They love Brookline and the neighborhoods where they live and don't want to sell the residences they love and in which they have lived for decades.

This is often a hidden problem. Some of our senior neighbors may already be struggling with paying Brookline's rising real estate taxes and water/sewer fees, and yet they are too embarrassed to discuss this openly. To pay for these expenses, they may have been putting off needed home repairs or medical care or living very bare-boned lives. However, the problems they face are real and will only get worse if, as it appears likely,

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Brookline voters approve two or more additional tax overrides and debt exclusions during the next few years to meet the educational needs of our expanding school-age population.

The statistical data that our Committee examined indicates that the Brookline senior homeowners most in need and most likely to benefit from this warrant article proposal are unmarried senior women, living alone, particularly those 80 years of age and older.

According to our Committee's analysis of micro-data collected by the American Community Survey for the years 2013-2017, nearly 12 percent of Brookline's senior homeowner households (about 475 households) had household incomes low enough to qualify them for the Massachusetts Senior Circuit Breaker Income Tax Credit on their state income taxes during those years and had a median annual household income of \$27,400. This group of senior homeowners were predominantly female (77 percent), unmarried (72 percent), living alone (63 percent), and quite elderly (50 percent were age 80 and over). Nearly 22 percent of these 475 households (103) had a mortgage on their home, and over 73 percent spent 30 percent or more of their total household income on regularly recurring housing costs (such as property taxes, mortgage payments, condo fees, utilities, and home insurance, but not including repairs or other extraordinary costs). Over 39 percent of these households (186) spent 50 percent or more of their total household income on housing costs (an amount that economists generally consider to be indicative of severe financial stress), and, of this group, 49 percent had a mortgage on their home.

The new program proposed in this warrant article would make a significant difference in the lives of many of these struggling senior homeowners.

It also has many other advantages:

- It's based on a time-tested model which has been in operation in Sudbury since 2014, and our Town would be able to benefit from Sudbury's experience with it.
- It's popular. Sudbury's voters overwhelmingly voted in favor of continuing its program in 2016, and other communities such as Concord have adopted a version of this plan or have petitioned the state legislature to do so.
- It would help senior homeowners with low and modest incomes and high housing expenses who can't qualify for the Tax Deferral Program and are clearly in need of additional assistance.
- It could assist an estimated 100 or more senior households currently, and perhaps more in the future.
- It would have a fixed, knowable, and relatively modest cost (about \$491,000 at 0.25%).

- It would be familiar to state legislators and, as a result, more likely to get legislative approval.
- It has been drafted in a way that gives the Town an opportunity to test out the Sudbury program in Brookline on a small scale and then, should Town Meeting choose, to extend Brookline's program to cover more seniors at a later date without having to undergo the time-consuming process of getting new approval by the state legislature.
- It would be flexible and able to take account of future overrides, debt exclusions, and inflation.
- It has the potential of providing much needed property tax assistance to more Brookline seniors than are currently participating in all of Brookline's current tax assistance programs combined.

The Moderator's Committee on Elderly Tax Relief spent nearly two years studying senior tax relief programs in other communities throughout Massachusetts and in other states. We were most impressed with the Sudbury program. For all of the above reasons, we believe that this proposed new Sudbury-modeled Brookline program has enormous potential for the Town and would provide welcome financial relief to a significant number of needy senior homeowners who are not being helped by the Town's current programs.

#### SELECT BOARD'S RECOMMENDATION

Due to the COVID-19 crisis the Select Board voted to pursue a limited warrant for the Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. The Select Board offers no recommendation under this article.

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#### ADVISORY COMMITTEE'S RECOMMENDATION

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**XXX**

# *Town of Brookline*

## *Massachusetts*

10/16/20

Department of Planning and  
Community Development  
Town Hall, 3rd Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2130  
Alison Steinfeld, Director

### **Article 27: Micro Units**

### **Planning Board Report and Recommendation**

#### **Warrant Article Description**

Micro Unit Dwellings are defined in the Town's Zoning By-law under Section 2.04.3.f as buildings or portions thereof containing residential units with no more than 500 square feet in gross floor area; such buildings may have flexible common areas for living and/or working. Micro Unit dwellings are currently prohibited in all zoning districts except the Emerald Isle Special District in which they are allowed by Special Permit.

This article proposes to allow Micro Unit Dwellings by right in all districts except the Single-Family districts (S), the Business and Professional Offices districts (O), and the Industrial district (I), with the existing exception of the Emerald Isle Special District-EISD. Article 27 would also eliminate parking requirements for any dwelling units that qualify under the definition for Micro Unit Dwellings and eliminate the parking requirements for any common areas, lobby space, and amenities in buildings containing at least 75% Micro Unit Dwellings. (Note: The petitioner has stated that he will not "move" at Town Meeting the paragraph that eliminates the residential parking requirements.]

#### **Background**

Prior to the 2016 Special Town Meeting, the Zoning By-law contained no references to micro units, and they were allowed by right in all zoning districts. No distinction was made between dwelling units based on their square footage and therefore dwelling units under 500 square feet were permitted the same way that units over 500 square feet were permitted. At the 2016 Special Town Meeting, Article 7 was passed which established the Emerald Island Special District. Part of that article included the addition of a definition for Micro Unit Dwellings and its addition to the Table of Use Regulations (Section 4.07), where it was prohibited in all districts except the newly created Emerald Island Special District. Likely inadvertently, this change prohibits the construction of dwelling units under 500 square feet throughout the Town (with the exception of the I-EISD).

At the 2019 Special Town Meeting, Article 20 was proposed, which would have allowed Micro Unit Dwellings in the G-1.75 (CC) zoning district. The article would have also granted several benefits to any project that included a certain threshold of Micro Unit Dwellings,

including reduced requirements under the By-law sections related to Public Benefits Incentives and reduction in parking requirements. The article did not pass Town Meeting. The 2016 Housing Production Plan (HPP) lists micro units as one method of increasing housing stock in opportunity areas, but does not provide any other policy guidance about them.

## Planning Board Comments

As suggested by the Petitioner and the HPP, micro units are an effective tool that can be employed by the Town to increase housing production, reduce housing costs and provide a more environmentally sustainable housing type. Insofar as units with less than 500 square feet should be permitted in Town, the Planning Department is therefore supportive of initiatives to allow such units in the appropriate areas (at a minimum). However, the nature (and the benefits) of these units are premised on their location near walkable amenities and public transportation. This characteristic is implied by the Petitioner where they propose the elimination of parking requirements for Micro Unit Dwellings. Unfortunately, a significant portion of the Town is neither accessible to public transportation nor is it particularly walkable. However, the Planning Board thought that some reduction in parking for a studio or one bedroom micro unit was warranted and suggested that one parking space be required. (In the Transit Parking Overlay District (TPOD) a studio requires one space and a one bedroom requires 1.4 spaces.) They also recommended that a special permit, rather than a variance, be allowed to reduce or eliminate parking, if it is demonstrated that it is warranted.

**The Planning Board therefore voted (4-0) to recommend Favorable Action on Article 27** with the addition of language requiring one parking space be provided for a studio or one bedroom micro unit, and a special permit allowing the parking requirement to be lowered, if it is demonstrated that it is warranted.

ARTICLE 27X ARTICLE

Submitted by: Michael Zoorob; Lisa Shatz TMM P11; Jeff Wachter

To see if the Town will amend the Zoning By-Law as follows (proposed new language is underlined and deletions are noted with a strikethrough):

1. By amending the Table of Use Regulations, Section 4.07, Principal Uses, Section 6D. Dwelling, Micro Unit as follows:

Principal Uses	Residence					Business			Ind.
	S	SC	T	F	M	L	G	O	I
<b>RESIDENCE USES</b>									
6D. Dwelling, Micro Unit *Permitted by Special Permit in the I-(EISD) District in accordance with 5.06.4.j.	No	<del>No</del> <u>Yes</u>	<del>No</del> <u>Yes</u>	<del>No</del> <u>Yes</u>	<del>No</del> <u>Yes</u>	<del>No</del> <u>Yes</u>	<del>No</del> <u>Yes</u>	No	No*

2. By amending Section 6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS by adding another paragraph as Note #3 after Note #2 below the Table as follows (new language is underlined):

3. For Use 6D (Micro Unit Dwellings), there shall be no off-street parking space requirement. For any building that contains seventy five percent (75%) or more Micro Unit Dwellings, no additional parking spaces shall be required for floor areas used for common area, lobby, or amenity space.

Or act on anything thereto.

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PETITIONER'S ARTICLE DESCRIPTION

This Warrant Article allows Micro Unit Dwellings (defined as housing units comprising less than 500 square feet) to be built in zoning districts permitting 2-family, 3-family, and apartment house dwellings. Furthermore, it exempts Micro Unit Dwellings from residential car parking requirements and exempts buildings containing more than 75% Micro Unit Dwellings from additional car parking otherwise required for lobbies and common spaces.



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Unlike the 2019 Micro Unit Warrant Article, this Article applies all other zoning requirements (e.g. commercial frontage requirements in business districts) to Micro Unit Dwellings and is not limited to the Coolidge Corner Business District.

The Advisory Committee report on the 2019 Micro Unit Warrant Article noted that Micro Unit Dwellings had been permitted under Brookline zoning prior to the Fall of 2016, when explicit approval of Micro Unit Dwellings in the Emerald Isle Special Overlay District “perhaps inadvertently” banned them everywhere else. Many individual Micro Units exist in Brookline (for example, 16 Micro Unit apartments were built in 1968 at 45 Longwood Avenue).

Micro Unit Dwellings are an environmentally sustainable housing type. The size of a dwelling is a significant determinant of household greenhouse gas emissions, with larger dwellings producing more greenhouse gas emissions than smaller ones.<sup>1</sup> Because of their small size, Micro Units require significantly less energy to heat, cool, and live in.

Micro Unit Dwellings can provide some otherwise “priced-out” individuals the opportunity to live in Brookline. While new Micro Unit Dwellings are unlikely to be affordable to people who are low-income (except for those deeded affordable units created through inclusionary zoning), they are less expensive than virtually all other new construction and may provide housing options for young adults (who might otherwise live with roommates) and seniors looking to downsize.

Allowing Micro Unit Dwellings likely produces net fiscal benefits to the Town because this type of housing expands the tax base without incurring significant financial obligations. Consequently, this Warrant Article can help diffuse the tax burden from overrides across a larger number of taxpayers, reducing the tax amounts paid by individual households.

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## SELECT BOARD’S RECOMMENDATION

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## ADVISORY COMMITTEE’S RECOMMENDATION

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<sup>1</sup> Goldstein, B., Gounaridis, D., & Newell, J. P. (2020). The carbon footprint of household energy use in the United States. *Proceedings of the National Academy of Sciences*, 117(32), 19122-19130.

11.A.

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# *Town of Brookline*

## *Massachusetts*

10/16/20

Department of Planning and  
Community Development  
Town Hall, 3rd Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2130  
Alison Steinfeld, Director

### **Article 27: Micro Units**

### **Planning Board Report and Recommendation**

#### **Warrant Article Description**

Micro Unit Dwellings are defined in the Town's Zoning By-law under Section 2.04.3.f as buildings or portions thereof containing residential units with no more than 500 square feet in gross floor area; such buildings may have flexible common areas for living and/or working. Micro Unit dwellings are currently prohibited in all zoning districts except the Emerald Isle Special District in which they are allowed by Special Permit.

This article proposes to allow Micro Unit Dwellings by right in all districts except the Single-Family districts (S), the Business and Professional Offices districts (O), and the Industrial district (I), with the existing exception of the Emerald Isle Special District-EISD. Article 27 would also eliminate parking requirements for any dwelling units that qualify under the definition for Micro Unit Dwellings and eliminate the parking requirements for any common areas, lobby space, and amenities in buildings containing at least 75% Micro Unit Dwellings. (Note: The petitioner has stated that he will not "move" at Town Meeting the paragraph that eliminates the residential parking requirements.]

#### **Background**

Prior to the 2016 Special Town Meeting, the Zoning By-law contained no references to micro units, and they were allowed by right in all zoning districts. No distinction was made between dwelling units based on their square footage and therefore dwelling units under 500 square feet were permitted the same way that units over 500 square feet were permitted. At the 2016 Special Town Meeting, Article 7 was passed which established the Emerald Island Special District. Part of that article included the addition of a definition for Micro Unit Dwellings and its addition to the Table of Use Regulations (Section 4.07), where it was prohibited in all districts except the newly created Emerald Island Special District. Likely inadvertently, this change prohibits the construction of dwelling units under 500 square feet throughout the Town (with the exception of the I-EISD).

At the 2019 Special Town Meeting, Article 20 was proposed, which would have allowed Micro Unit Dwellings in the G-1.75 (CC) zoning district. The article would have also granted several benefits to any project that included a certain threshold of Micro Unit Dwellings,

including reduced requirements under the By-law sections related to Public Benefits Incentives and reduction in parking requirements. The article did not pass Town Meeting. The 2016 Housing Production Plan (HPP) lists micro units as one method of increasing housing stock in opportunity areas, but does not provide any other policy guidance about them.

## Planning Board Comments

As suggested by the Petitioner and the HPP, micro units are an effective tool that can be employed by the Town to increase housing production, reduce housing costs and provide a more environmentally sustainable housing type. Insofar as units with less than 500 square feet should be permitted in Town, the Planning Department is therefore supportive of initiatives to allow such units in the appropriate areas (at a minimum). However, the nature (and the benefits) of these units are premised on their location near walkable amenities and public transportation. This characteristic is implied by the Petitioner where they propose the elimination of parking requirements for Micro Unit Dwellings. Unfortunately, a significant portion of the Town is neither accessible to public transportation nor is it particularly walkable. However, the Planning Board thought that some reduction in parking for a studio or one bedroom micro unit was warranted and suggested that one parking space be required. (In the Transit Parking Overlay District (TPOD) a studio requires one space and a one bedroom requires 1.4 spaces.) They also recommended that a special permit, rather than a variance, be allowed to reduce or eliminate parking, if it is demonstrated that it is warranted.

**The Planning Board therefore voted (4-0) to recommend Favorable Action on Article 27** with the addition of language requiring one parking space be provided for a studio or one bedroom micro unit, and a special permit allowing the parking requirement to be lowered, if it is demonstrated that it is warranted.

**Kate MacGillivray**

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**From:** Alison Steinfeld  
**Sent:** Monday, October 19, 2020 5:22 PM  
**To:** Kate MacGillivray  
**Cc:** Devon Williams  
**Subject:** Fw: Article 27 back at the Select Board for a vote 10/20/20

Hi, Kate-

Could you please send the following e-mail to the Select Board, which is taking up the matter on Tuesday night? (I'm not sure if Devon is back yet.)

Thanks.

Alison

Alison C. Steinfeld, Planning Director  
Town of Brookline  
Planning and Community Development Department  
333 Washington Street  
Brookline, MA 02445  
617-730-2130

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**From:** Jonathan Davis <jdavis@kcl-law.com>  
**Sent:** Monday, October 19, 2020 5:16 PM  
**To:** Alison Steinfeld <asteinfeld@brooklinema.gov>  
**Subject:** Article 27 back at the Select Board for a vote 10/20/20

Dear Director Steinfeld:

I guess that I should be submitting this email to you with the request that you pass it along to the Select Board when they consider voting on Art. 27. If I'm mistaken, please let me know, but this seemed to work last week. My further comments about Art. 27 – based upon last week's hearing – now follow. Thank you for your patience.

Jonathan Davis  
TMM Pct. 10

Dear Select Board:

In anticipation of your meeting on October 20<sup>th</sup> to vote on Article 27 I would like to submit this brief email with further thoughts. These are based upon what I heard at your hearing last week.

1 – The Explanation of Art. 27 says that larger dwellings produce more greenhouse gas emissions than smaller ones, and cites Goldstein et al “The Carbon Footprint of household energy use in the United States”, in the Proceedings of the National Academy of Sciences, 117(32), 19122-19130.

## 11.A.

The article concludes that large single family houses in large lot single family neighborhoods use more energy than multiunit apartment buildings (energy consumption being a proxy for greenhouse gas emissions); also, that wealthier neighborhoods – with their large single family houses – use more energy per capita per sq. ft. than less wealthy neighborhoods with units in multiunit buildings. The article recommends, as a way of achieving the Paris climate agreement goals, neighborhoods of small single family and small apartment residences, plus decarbonization of the energy grid, plus extensive retrofitting of older buildings

The article does not discuss energy consumption of multiunit buildings with micro units vs. energy consumption of multiunit buildings with larger units.

However, with a little thought it should be clear that buildings with micro units may well be more energy intensive than buildings with larger units. For example, Zoning By-Law sec. 4.08. 6.c prescribes – for purposes of the Affordable Housing By-Law - the maximum size of a studio as 500 sq. ft., a 1 BR unit as 700 sq. ft., a 2 BR unit as 900 sq. ft., a 3 BR unit as 1100 sq. ft., and a 4 BR unit as 1300 sq. ft. Next, imagine a multiunit building where the developer swaps out a 1 BR unit of 700 sq. ft. for two micro units of 350 sq. ft. each. In doing this the developer is doubling the number of stoves with ovens, microwave ovens, refrigerators, dishwashers – perhaps clothes washers and dryers. If the developer swaps out a 3 BR unit of 1100 sq. ft. for three micro units of 366.66 sq. ft. each the developer is tripling the number of energy intensive utilities. This can also work swapping out a 4 BR unit for four micro units of 325 sq. ft. each, quadrupling the number of high energy consumption utilities. (Swapping out a 2 BR unit of 900 sq. ft. for three micro units of 300 sq. ft. each is, I suppose, possible but the developer may think the micro units too small to be attractive; in that case the developer may fall back on two micro units of 450 sq. ft. each). The point is that (a) the article that the Explanation relies upon misses the mark; and (b) common sense demonstrates that building with more micro units rather than larger units builds in more energy consumption (and, according to the article, energy consumption is a proxy for greenhouse gas emissions).

2 – At last week's hearing the proponent asked what is wrong with micro units. I don't know if the proponent was speaking rhetorically; but, even if he was, I would like to respond.

There are some things that are inherently wrong with micro units, and other things that are wrong when micro units are put into context with other considerations.

By themselves, micro units are permitted – because of the state Health Code – to have as many of 3 BRs (1 BR of 150 sq. ft., the other two BRs of at least 100 sq. ft. each). Is this kind of crowding healthy, especially in a new era of pandemics?

If a developer builds and markets 3 BR micro units to families with children – is this kind of crowding desirable both from an infectious disease concern but, also, from the perspective of potential abusive behavior?

## 11.A.

Micro units replacing larger multi bedroom units may be more expensive to tenants. Last November the proponent of then Art. 19 said that he would expect to rent a new 350 sq. ft. micro unit in Coolidge Corner for \$2,500/month, and a new three BR unit for \$7,000/month. When you do the arithmetic, living in a micro unit would cost a tenant \$2,000/year more than being an equal roommate in the three BR unit.

Contextualizing micro units with other factors can prove disastrous for neighborhoods. For example, incentivizing micro units by favoring them with lower, or even zero, parking requirements may lead to the tear down of commercial buildings, evicting commercial tenants, and replacing the buildings with 40% less ground floor commercial space; and because the commercial space is new construction it is more expensive, and because there is less commercial space the new businesses (and paying new construction rents) may be less viable.

Similarly, incentivizing micro units with lower or zero parking may lead to the conversion of existing rental apartment buildings into buildings with mostly or entirely micro units, resulting in the eviction of existing tenants, many of whom are families who provide neighborhood stability.

Similarly, incentivizing micro units with lower or zero parking may lead to the tear down of lower FAR buildings (whether commercial or residential) and their replacement with high density micro unit buildings. Lower FAR buildings can provide neighborhood amenities like less street crowding, greenspace, and open sky.

Similarly, incentivizing micro units with lower or zero parking may lead to what are effectively off campus high end dormitories in what are otherwise quiet and family oriented neighborhoods. (Compare, for example, the recurring complaints about Dexter Park). Even without parking incentives, the possibility of off campus high end dormitories is a risk that should be prevented. This is especially acute because micro unit balconies don't count towards a micro unit's FAR, and developers can game the zoning by-law by building and marketing micro units with balconies.

I could go on, but it's sufficient to say that there is plenty wrong with micro units – both in and of themselves, but, also, when contextualized with other zoning considerations and contextualized in neighborhoods.

Given the disagreement among the AC, the Zoning By-Law Committee, and the Planning Board as to what to do about Art. 27 – and given the Building Commissioner's sudden change of mind – I respectfully suggest that the Select Board simply recommend No Action on Art. 27.

Jonathan Davis  
TMM Pct. 10

11.A.



ARTICLE xX ARTICLE

Submitted by: The Long-Term Policy and Planning Sub-Committee of the Advisory Committee

To see if the Town will amend its Section 2.1.14 and its Article 2.2 and its Article 3.20 of its General By-Laws to establish a fiscal education requirement for all Town Meeting Members, Advisory Committee Members and other elected officials and individuals appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town. The proposed added language is underlined below.

#### SECTION 2.1.14 MANDATORY EDUCATIONAL TRAINING FOR TOWN MEETING MEMBERS

All Town Meeting Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on that date, and within one hundred and twenty (120) days after their initial election for Town Meeting Members elected subsequent to that date, complete the on-line Conflict of Interest Law training provided by the State Ethics Commission. In the alternative, Town Meeting Members may attend an educational training seminar hosted by the Office of Town Counsel. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall not be required to receive such training more than once, unless they are otherwise required to do so as special municipal employees under the provisions of G.L. c. 268A. This by-law provision became effective on May 1, 2016.

Further, all Town Meeting Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Town Meeting Members incumbent on said effective date, and within one hundred and twenty (120) days after their initial election to Town Meeting for Members elected or caucused in subsequent to said effective date, attend a fiscal educational training seminar incorporating financial information about both the Town and the Public Schools of Brookline hosted by Town Staff, members of the Advisory Committee, other knowledgeable parties, or any combination of the aforementioned. This Article shall not apply to Town Meeting Members who have fulfilled the training requirements set forth in Article 3.20. Town Meeting Members shall be required to receive such training at least every three years. This by-law provision will have an effective date of no later than May 1, 2021.

#### Article 2.2.2 TERMS OF APPOINTMENT

Members shall hold office from July 1st, in the year of their appointment, for three-year staggered terms and until their successors are appointed. All vacancies shall be

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filled by the Moderator for the unexpired remainder of the term of the appointee's predecessor.

A member of the Committee shall cease to be a member upon the occurrence of any of the following events:

1. Removal of residence from the Town of Brookline.
2. Absence from seven or more duly called and held meetings of the Committee during any year of the member's term, considering each period from July 1 to the following June 30 as a year for this purpose.

A member of the Committee who is a Town Meeting Member shall cease to be a member of the Committee effective the 30th day of June following the occurrence of any of the following events:

3. Removal of residence from the precinct from which elected a Town Meeting Member.
4. Failure of re-election as a Town Meeting Member.
5. Expiration of term as a Town Meeting Member.

Upon ascertaining that any of events 1-5 has occurred, the Chairman of the Committee shall notify the Secretary of the Committee who shall give written notice to the member in question. A copy of such notice shall be sent promptly to the moderator.

Further, all Advisory Committee Members shall, within one hundred and twenty (120) days after the effective date of this by-law for Advisory Committee Members incumbent on said effective date, and within one hundred and twenty (120) days after their initial appointment he Advisory Committee subsequent to said effective date, attend a fiscal educational training seminar incorporating financial information about both the Town and the Public Schools of Brookline hosted by either hosted by Town Staff, members of the Advisory Committee, other knowledgeable parties, or any combination of the aforementioned. This Article shall not apply to Advisory Committee members who have fulfilled the training requirements set forth in Article 3.20. Advisory Committee Members shall be required to receive such training at least every three years. This by-law provision will have an effective date of no later than May 1, 2021.

## **ARTICLE 3.20.2 MANDATORY EDUCATIONAL TRAINING**

All Elected and Appointed Officials shall within one hundred and twenty (120) days before or after their election or appointment to a Committee or

Sub- committee, attend an educational training seminar hosted by the Office of Town Counsel which shall include the requirements of the Open Meeting Law and Conflict of Interest Law In the alternative, members may meet with Town Counsel, or a member of his/her staff, to receive such information and training.

Further, all Elected and Appointed Officials appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town shall, within one hundred and twenty (120) days after the effective date of this by-law if incumbent on said effective date, and within one hundred and twenty (120) days after their initial election or appointment subsequent to said effective date, attend a fiscal educational training seminar incorporating financial information about both the Town and the Public Schools of Brookline hosted by Town Staff, members of the Advisory Committee, other knowledgeable parties, or any combination of the aforementioned. Elected and Appointed Officials appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town shall be required to receive such training at least every three years. This by-law provision will have an effective date of no later than May 1, 2021.

**Or act on anything relative thereto**

#### PETITIONER'S ARTICLE DESCRIPTION

Due to the COVID-19 crisis, the Select Board voted to pursue a limited warrant for the Annual Town Meeting to meet the challenges of conducting an alternate form of town meeting and alleviate the number of public meetings and public hearings conducted during the state of emergency. This article is a duplicate of the article filed for the Annual Town Meeting.

In its final report, the Brookline Fiscal Advisory Committee ("BFAC") recommended that the Town amend Section 2.1.14 of the Town By-Laws to include the requirement that every three years, all Town Meeting Members attend at least one informational/training meeting that covers the Town budgeting process and financial matters and is conducted by Town Hall staff and/or a small group of Advisory Committee members. BFAC made this recommendation for two reasons. First, during their year-long research, which included many conversations and multiple meetings, BFAC members came to the realization that the level of comfort and degree of familiarity that members of Town boards, committees, and commissions have with financial terminology, concepts, and topics varies significantly. It is important that any analysis or discussion of Town finances presented in reports, at committee meetings, and at Town Meeting be understood by participants with varying levels of financial literacy. Second,

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BFAC members are of the strong belief that any elected or appointed individual should have at least a basic understanding of financial matters impacting the Town.

This warrant article asks Town Meeting both to accept the recommendation of BFAC and to expand the education requirement to include all members of the Advisory Committee as well as to all Elected and Appointed Officials appointed to any Board or Commission that has or could reasonably be expected to have input into any matter affecting the financial situation of the Town.

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SELECT BOARD'S RECOMMENDATION

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ADVISORY COMMITTEE'S RECOMMENDATION

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**XXX**

Bernard Greene's Alternative to Warrant Article 32

I move the following amendment to Warrant Article 32 that replaces said article in its entirety with the following:

**A Resolution on Repairing Disparities  
In Health Outcomes, Food and Nutrition Insecurity, and Housing Insecurity**

WHEREAS, The Town of Brookline suffers from racial and other disparities in health outcomes, food and nutrition security, and housing security that negatively impacts especially people of color and other vulnerable people (the "Disparities"); and

WHEREAS, The COVID-19 pandemic has accelerated the Disparities in the Town; and

WHEREAS, Brookline's Disparities are similar to those in many similar municipalities in America; and

WHEREAS, Brookline, through its Select Board, School Committee, Town Meeting, and Town Staff, is committed to repairing the Disparities and continue to devote Town resources to that end.

**NOW, THEREFORE, BE IT RESOLVED:**

1. That the Town of Brookline commits to undertake robust but prudent steps to address the Disparities.
2. That the Town of Brookline, by the Director of the Office of Diversity, Inclusion, and Community Relations (the "Director"), prepare a report on ways to repair the Disparities in Brookline (the "Report").
3. That, in preparing the Report, the Director shall work with other Town departments, including the Schools Department, the Health and Human Services Department, the Planning Department, the Finance Department, and Town Counsel and shall consult with non-Town agencies, including the Brookline Center, the Brookline Community Foundation and other relevant agencies.
4. That the Report be submitted to the Select Board by the opening of the Warrant for the Annual Town Meeting in the spring of 2021.
5. That the Report include (i) a description of each aspect of the Disparities, (ii) a list of the private agencies and programs in Brookline and elsewhere and the Town departments and bodies that are currently addressing the Disparities and are available for further ongoing work to repair the Disparities, (iii) a list of non-Town funding sources, including private sources and state and federal government sources, that can be utilized to repair the

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Disparities, (iv) any recommended allocations in the Fiscal Year 2022 Town budget and beyond that intentionally target the Disparities, (v) a list of concrete actions that can be taken by the Town or that private agencies or programs can take to repair the Disparities.

6. The Report shall also specifically include ways in which the Town of Brookline can:

a. Continue to use its CDBG block grants, but in more robust and creative ways, (i) to support social programs for vulnerable populations and (ii) to fund repairs, maintenance, and improvements to BHA facilities,

b. Work with the BHA to identify additional sources of funding for the needs of the BHA, including, where appropriate and authorized, Town funds for the needs of BHA residents and other vulnerable populations,

c. Generate additional funds from, for example, economic development, government and private grants, operating overrides, budget reallocations, or other sources to fund the foregoing with minimal conflict with other priorities of the Town.

7. The Director and other Town staff shall pursue private grants or other non-Town moneys for any necessary consultant time or support services in addition to Town resources devoted to the preparation of the Report.

Or act on anything relative thereto.



ARTICLE 32X ARTICLE

Submitted by: C. Scott Ananian, TMM-10; Bonnie Bastien, TMM-5; Ryan Black; Deborah Brown, TMM-1; Arthur W. Conquest III, TMM-6; Anne Greenwald, TMM-8; Bob Lepson, TMM-9; Maya Norton; Naomi Sweitzer, TMM-10

To see if the Town will adopt the following Resolution:

WHEREAS, Black residents make up 3.2% of Brookline's population but 17.5% of its COVID-19 cases in which race is known;

WHEREAS, Black residents make up 3.2% of Brookline's population but 15% of its arrests of Brookline residents in 2019 (15/101), 19% of arrests of Brookline residents in 2018 (12/62) and 12% of arrests of Brookline residents in 2017 (9/76);

WHEREAS, in June 2020 Brookline Town Meeting directed the Town to stop funding the Gerald Alston appeal, but the Select Board has continued to expend Town funds to pursue this appeal,

WHEREAS, despite erecting Black Lives Matter banners at Town Hall and our libraries, Brookline failed to pass a significant reallocation of its police budget in support of initiatives to support vulnerable residents including people of color, instead hiring new officers while laying off teachers;

WHEREAS, Brookline's Police Department budget per resident is higher than its neighbors Arlington, Belmont, Chelsea, Dedham, Lexington, Lynn, Needham, Newton, Revere, Somerville, Waltham, and Winchester;

WHEREAS, Brookline's number of police officers per resident is greater than its neighbors Arlington, Belmont, Cambridge, Dedham, Lexington, Lynn, Melrose, Needham, Newton, Revere, Somerville, Waltham, and Winchester;

WHEREAS, Brookline's affordable housing, maintained by the Brookline Housing Authority, is in demonstrated need of repair and renovation and Brookline's FY21 budget failed to earmark sufficient money for this purpose;

WHEREAS, food insecurity is still a real issue in our Town;

THEREFORE BE IT RESOLVED that the Town will act to redress injustice and commit to an inclusive and progressive budget for FY22 which prioritizes funding for:

1. Affordable housing, including maintenance and improvements to BHA properties;
2. Efforts to reform and reimagine policing;
3. Efforts directed at underrepresented and/or marginalized communities to encourage participation and inclusion in Brookline government;
4. Equitable access to schooling, including internet access in BHA properties; and

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5. Efforts to mitigate the effects of COVID-19 on our most vulnerable, including funding to eliminate food insecurity.

Or act on anything relative thereto.

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PETITIONER'S ARTICLE DESCRIPTION

The Brookline FY21 budget debate and current events related to the COVID-19 pandemic and racial justice have exposed the gap between Brookline's stated values and the priorities exposed by Town budget allocations. Statistics show that, despite its intentions, there remains a wide equity gulf in our Town. This Warrant Article challenges Brookline to make good on its rhetoric in the FY22 budget cycle and commit to addressing real Town needs with specific funding, including (but not limited to):

**Affordable Housing:** The Town has outdated zoning, and urgently needs to review and update many of its zoning requirements, especially (but not exclusively) in the transit/commercial corridors where changes could encourage significant mixed-use (i.e. additional residential) development. New development along Beacon Street, for example, could bring increased housing opportunities at all levels, including subsidized and middle income housing, along with more robust businesses, all of which will add to our tax base. Dedicated staff, such as the Economic Development Long-Term Planner position advocated for by Paul Saner, co-chair of the Economic Development Advisory Board, could accelerate the process of zoning reform.

**BHA Kitchen Renovations:** High Street Veterans is a Brookline Housing Authority family development consisting of 177 units. Egmont Street Veterans is a Brookline Housing Authority family development consisting of 114 units. Every kitchen in these buildings requires renovation and repair, at ~\$10,000/unit. This project was recommended by Michael Jacobs, then-chair of the Brookline Housing Authority, the budget was supplied by him.

**Other Repairs to BHA Properties:** \$57,000 is required for painting and patching front hallways and \$52,000 for painting and patching rear hallways at the High Street Veterans property, for a total of \$109,000; and \$36,000 for painting and patching front hallways and \$33,000 for painting and patching rear hallways at the Egmont Street Veterans property, for a total of \$69,000. These projects totaling \$178,000 were selected by Michael Jacobs, then-chair of the Brookline Housing Authority, and the budgets were supplied by him.

**Reform and Reimagine Policing:** The Reform and Reimagine Policing committees, chaired by Select Board members Bernard Greene and Raul Fernandez, respectively, were formed by the Select Board with members selected on August 11, 2020. The ambitious charges to each committee include items that will require funding to implement.

**Community Engagement Plan Supplies/Services:** Warrant Article 30 of the Fall 2019 Town Meeting, established a Community Engagement Plan. The budget passed by Town Meeting in June 2020 funded a Community Engagement Specialist position (prorated for 10 months), but did not provide any funds for implementation of the Community Engagement Plan. The Community Engagement Plan already approved by Town Meeting

should be provided with the operations funds needed. In addition, each department should be provided with funds earmarked for its own specific outreach and engagement efforts to underrepresented or marginalized communities.

School Social Workers: Currently there are just 2 social workers for all ~5500 K-8 students and 4 for ~2200 HS students. Additional social workers would immediately support minority and low-income students, families struggling with unemployment, as well as the unique mental health needs arising from the COVID-19 pandemic. These needs should be factored into the Town/School Partnership.

BHA Internet and Related Costs: Through the efforts of the schools, the Brookline Housing Authority, and Steps to Success, Internet access has been made more widely available at the family properties of the Brookline Housing Authority in the past year. But what's needed is low-cost internet service. The BHA negotiated, on a pilot basis, very low cost service fixed for several years for all 32 households at Dummer St. with RCN when the building was opened a few years ago. The deal worked because the BHA subsidized a portion of the monthly service cost but the BHA does not have the funds to do that more widely at this time. The BHA would like to replicate the pilot on a larger scale.

Food security: Brookline still has many residents who go hungry. The Food Pantry was allocated \$160,663 of Community Development Block Grant funds in May, but more resources are needed. Utilization of the Food Pantry's services has increased by more than 200 percent since the beginning of the COVID-19 emergency in March. As of July, the Pantry was serving around 600 families per week, with 120 to 130 deliveries per week. The food delivery services offered by the Food Pantry and other local volunteer organizations also allow high-risk populations to acquire food without risking exposure to COVID. These needs will only increase as the COVID crisis continues, and the Pantry ought to be funded at a level on par with the extreme increased need to ensure that no Brookline resident goes hungry. Even in pre-COVID times in 2018, a survey conducted by Brookline Community Aging Network found that 26% of responding seniors had no food for 1-10 days the previous month, while an additional 18% went to bed hungry at least once in that same month (source). As an essential service (both in our state of emergency and in normal operations of our community), the Pantry should be supported by the Town in terms of funding, volunteer recruitment, and perhaps most importantly, acquisition of sufficient refrigerated storage space to meet current capacities.

These concrete needs, and others like them, have been neglected in the Town budgeting process, which often seems to prioritize non-essentials over the pressing needs of its poorer residents. This Warrant Article seeks to remind Brookline of those needs in order to ensure they are properly met in the Town's next budget cycle.

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SELECT BOARD'S RECOMMENDATION

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## ADVISORY COMMITTEE'S RECOMMENDATION

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ARTICLE 33

Submitted by: Deborah Brown, Arthur Conquest, III, and David Lescohier

Resolution (1) Urging the Select Board and the School Committee to Adopt Certain Changes Regarding the Town/School Partnership (TSP), (2) Urging the Select Board to Re-Examine the 'Waterfall' Governing the Allocation of Free Cash, and (3) Urging the Select Board, and Town Administrator to Evaluate the Possibility of Creating a Formal Participatory Budgeting Process in Brookline.

To see if the Town shall adopt the following resolution:

Part 1:

Whereas on May 16, 1995 the Town Administrator and the Superintendent of Schools recommended the Board of Selectmen and the School Committee adopt a formula-based approach to allocating marginal surpluses/deficits as set forth in the Memorandum of Understanding Town/School Budget Partnership executed on such date; and

Whereas the formula-based method of carrying out the Town/School Budget Partnership was deemed to be in the best interests of the entire community because it codified and simplified the allocation of marginal resources between the Town and the Schools, and was intended to provide year to year stability and facilitation of long-range planning; and

Whereas the Town/School Partnership Memorandum states that "this formula will need to be revisited at intervals in the case of unanticipated state mandates or extraordinary circumstances..."; and

Whereas the Town/School Budget Partnership was expected to provide a collaborative planning framework in which the Town Administrator, the Superintendent of Schools and representatives of the Select Board and School Committee could jointly identify develop planning agendas; and

Whereas, the Brookline Fiscal Advisory Committee (BFAC), in line with its charge, examined the TSP and made recommendations calling on the Select Board, the School Committee and their respective staffs to focus on a redesign that simplified and clarified the TSP; and

Part 2

Whereas, the Town budgets with an expectation of generating so-called 'Free Cash'; and

Whereas, the amount of Free Cash generated from year to year is volatile and subject to influences outside the Town's control; and

Whereas, the Town has a financial policy governing the use (shall not be used for operating purposes) and allocation of Free Cash (the Waterfall); and

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Whereas the Town's Fiscal Policy Review Committee historically has established and revised the Free Cash Policy; and

### Part 3

Whereas, Brookline, despite its structure as a Town with representative government, does not have a Participatory Budgeting process which gives residents of Brookline some direct say over a portion of the Town's Capital Budget expenditures;

Whereas, the needs of vulnerable populations should be taken into account during the budget process;

NOW, THEREFORE, BE IT RESOLVED that Town Meeting urges the Town of Brookline, Select Board and the School Committee to enhance the Town/School Partnership and the Budgeting process by making recommendations leading to the implementation regarding:

1. Instituting changes to the Town/School Partnership as recommended by BFAC; and
2. Increasing community understanding of and engagement in the annual budget process by creating and holding periodic budget "Summits" which should incorporate periods for public input; and
3. Reconvene the Fiscal Policy Review Committee to review the Waterfall allocation formulae for the overall Free Cash Policy and for the express purpose of determining a policy for funding emergency and/or acute needs of Brookline residents; and
4. Incorporate into the current incremental annual budget process a process by which the Town to intermittently and more effectively reprioritizes Town operating and/or capital objectives; and
5. Evaluate and consider the establishment of a formal Participatory Budgeting process that would allow for direct decision making by the public with respect to a specific allocation of revenue for a discrete capital project; and
6. Consistent with BFAC recommendations, create formal explanations of the goals of budget appropriations, the metrics by which they will be judged, and the time frame over which the metrics will be analyzed and to undertake periodic lookbacks to ascertain their effectiveness,;
7. Provide resources to the finance staffs of both the Town and the School Department to accomplish the tasks outlined herein.

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Town Administrator, Superintendent of Schools, Select Board and School Committee to report the details of the course of actions hereby urged and their recommendations no later than the end of August, 2021, in advance of the November 2021 Special Town Meeting,

Or act on anything relative thereto.

ARTICLE 33X ARTICLE

Submitted by: Deborah Brown, Arthur Conquest, III, and David Lescohier

**Resolution to Urge the Select Board and the School Committee to Make Recommendations Regarding Expansion of the Town/School Partnership and Prioritize Funding for A Wider Range of Critical Needs**

To see if the Town shall adopt the following resolution:

Whereas the Town of Brookline entered a Town/School Partnership called a "Memorandum of Understanding Town/School Budget Partnership, May 16, 1995,"

Whereas the Town/School partnership was intended to provide a formula-based method for carrying out the Town/School Budget Partnership, and

Whereas the Town/School Partnership's membership is comprised of Town Administrator, Superintendent of Schools, and representatives of the Board of Selectmen and School Committee, and Advisory Committee, and

Whereas the Town/School Partnership is intended to provide a collaborative planning framework for the Town to jointly identify and develop planning agendas, and

Whereas the Town/School Partnership is intended to work in the best interests of the entire community."

Whereas the Town/School Partnership meets periodically, most often during the budget development process, and

Whereas there is no evidence that Town/School Partnership encourages meaningful public input, despite having a substantial impact on the Town's budget, and

Whereas there is no evidence that the Town/School Partnership has considered food justice, sustainability, mental health, and the like as part of its planning and distribution of operating and capital funds, and

Whereas there is no evidence that the Town of Brookline leaders, especially during the Town/School Partnership discussions, engage in participatory budgeting and,

Whereas, the Town/School Partnership should allow residents to be informed, discuss, and understand the prioritization of public spending projects, and

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Whereas, COVID-19 has fundamentally changed many resident's priorities, yet there is no evidence that institutions including the Town/School Partnership have adapted to this new reality, and

Whereas the Town/School Partnership Memorandum states that "this formula will need to be revisited at intervals in the case of unanticipated state mandates or extraordinary circumstances...", and

Whereas the present Town/School Partnership lacks a mechanism to demonstrate the benefits, goals, and metrics by which the Partnership will be judged, as called for in Brookline Fiscal Advisory Committee (BFAC Recommendation #6.1)<sup>1</sup>

Whereas BFAC Recommendation #8 calls for the Town School Partnership to revisit the structure, including the Town-School Partnership revenue allocation formula, to ensure both that it is better understood and that it best meets the needs of Town and Schools budgeting in a dynamic manner, and

Whereas BFAC found that "Town departments and School projects are not on equal footing and there is no process to evaluate their relative prioritized importance. As a result, there is limited transparency as to the rationale used to develop the current CIP", and

Whereas BFAC Recommendation #15.1 found that "any tax should be designed to allow for the broadest range of uses possible. These uses would include a range of projects for which there currently is insufficient capacity in the CIP, such as open space, parks, and affordable housing. The Town should avoid taxes that are designed as single- purpose levies", and

Whereas BFAC Recommendation #15.3 gets to the import of community engagement and planning. "As the Town develops plans, it must provide its taxpayers with the information that allows them to evaluate those plans and their costs on a basis entirely different from the piecemeal approach that is the current norm. Discussion of costs, benefits, trade-offs, and alternatives is a necessary component that should be provided to taxpayers when asking them to make decisions", and

NOW, THEREFORE, BE IT RESOLVED that Town Meeting urges the Town of Brookline, Select Board, and School Committee to *enhance Town/School Partnership participatory budgeting*, by making recommendations regarding:

1. Increasing the Town/School Partnership Committee membership to include residents from diverse economic backgrounds and advocate for social justice programming, and
2. Increasing community engagement in the Town/School Partnership process, by at a minimum, holding public hearings, and

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<sup>1</sup> Brookline Fiscal Advisory Committee (BFAC) Findings and Recommendations impacting the School Department.



3. Increasing allocation of the Town's Free Cash, with a goal of budgeting no less than twenty percent (20%), for food justice, sustainability, mental health, and the like, as part of its planning and distribution of free cash funded operating and capital appropriations, and
4. Consistent with BFAC recommendations, provide an explanation of the goals of these appropriations, the metrics by which it will be judged, and the time frame over which the metrics will be analyzed and to undertake periodic lookbacks to ascertain effectiveness, as there should never be an assumption that a program will continue indefinitely,

AND BE IT FURTHER RESOLVED that Town Meeting calls upon the Select Board and School Committee to report the details of the course of action hereby urged and its recommendations no later than the end of February, 2021, in advance of the opening of the warrant of the May 2012 Annual Town Meeting,

Or act on anything relative thereto.

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#### PETITIONER'S ARTICLE DESCRIPTION

The Town/School Partnership does not provide for any public participation during their meetings. Given the Town/School Partnership's significance in the planning, decision-making and budget, it has to be one of the most important organizations in Town government. If we are to meaningfully listen to the electorate, then the Town/School Partnership should be changed to provide for greater engagement. As an institution, its selection rubric should be expanded to include more funding for programming that benefits low income and disadvantaged residents. Aside from the affordable housing fund, it is heavily skewed to funding capital projects without exploring the relative benefit of truly assessing the range of needs in Brookline.

Participatory budgeting is a proven way of providing such inclusion. This warrant article will result in more equitable public spending, greater government transparency and accountability, increased levels of public participation (especially by marginalized or poorer residents), and democratic and citizenship learning. Participatory Budgeting allows residents to directly and positively involved in the Town's budgeting and the economic decision-making process and help ensure that the Town's capital improvement plan truly reflects the short-term and long-term priorities of Brookline's residents.

What is participatory budgeting? Participatory budgeting (PB) is a process of democratic deliberation and decision-making, in which ordinary Brookline residents will be able to help decide how to allocate part of a municipal or public budget. It will allow residents to identify, discuss, and prioritize public spending projects, and gives them the power to make real decisions about how money is spent. The purpose of this warrant article is to ensure that as part of the annual budget cycle community engagement is integrated into Brookline's established budgeting process.

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Few members of Town Meeting would say that the public is provided space to engage meaningfully in the budget process. By the time the budget is drafted and Advisory Committee meetings scheduled, almost all of the budget decisions have been made. And all too often social services and affordable housing are an after thought.

This warrant article provides for a process to involve those left out of traditional methods of public engagement during the Town/School Partnership deliberations, such as low-income residents, non-citizens and young. This is nothing new.

Many communities nationally and internationally have participatory budget programs. The following communities have some form of participatory budgeting. They are Cambridge, New York City, Oakland, Seattle and San Francisco. While the goals are greater than some of these communities, Brookline is ready to undertake participatory budgeting.

Brookline will join many other communities that are grappling with how to better include more residents in the Town's budget process, to ensure that these residents secure basic town services and to expand how and what the Town deems an important service or function.

Some of you may be concerned about creating a new process. We do not believe that the process will be unwieldy. Instead, we assert that participatory budgeting during the Town/School Partnership will improve support for an array of public activities because residents are fully informed.

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## SELECT BOARD'S RECOMMENDATION

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## ADVISORY COMMITTEE'S RECOMMENDATION

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ARTICLE 38X ARTICLE

Submitted by: Lisa Cunningham, Jesse Gray, Steven Heiken, Werner Lohe, Paul Saner, Kathleen Scanlon, Cora Weissbourd

To see if the Town will adopt the following resolution:

**A Resolution calling for Swift, Just Building Decarbonization in the Commonwealth.**

**WHEREAS**, The Commonwealth of Massachusetts has a legally binding statewide requirement of an 80% reduction in greenhouse gas emissions from 1990 levels by 2050;

**WHEREAS**, Brookline has committed to a goal of 80% reduction in greenhouse gas emissions from 1990 levels by 2050, and the Select Board's Climate Action Committee recommends prioritizing planning to achieve zero emissions by 2050;

**WHEREAS**, in 2018 the UN Intergovernmental Panel on Climate Change forcefully stated that in order to prevent catastrophic global warming we need to reduce carbon emissions to ~45% of 2010 levels by 2030 and reach net zero by approximately 2050;

**WHEREAS**, addressing climate change requires a just transition from fossil fuels to a decarbonized economy that is sustainable and equitable;

**WHEREAS**, low-income communities and communities of color in Brookline and worldwide are already disproportionately impacted by climate change, and will continue to bear an excess burden as temperatures increase, oceans rise, and disasters worsen;

**WHEREAS**, building emissions represent over 50% of greenhouse gas emissions in the Commonwealth and over 70% of the greenhouse gas emissions in the state's urban areas and therefore achieving the Commonwealth's mandatory greenhouse gas emissions targets will require building decarbonization;

**WHEREAS**, natural gas is a dangerous fossil fuel that generates indoor and outdoor air pollution, leaks explosive methane from aging infrastructure, and puts the health and safety of the Commonwealth's current and future citizens at risk;

**WHEREAS**, gas stoves produce harmful indoor emissions including nitrogen dioxide (NO<sub>2</sub>), carbon monoxide (CO), and formaldehyde (HCHO), each of which can cause various respiratory and other health ailments, and cooking with gas has been linked to asthma and other adverse health effects, with children and low-income households particularly affected;

**WHEREAS**, all-electric technology and net-zero carbon building capability exists today, is feasible, and is cost-effective;

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**WHEREAS**, the availability of renewable energy is growing and expected to continue to grow;

**WHEREAS**, under current regulations, towns and cities in Massachusetts are prohibited by law from adopting stringent building codes and regulations that will allow us to eliminate fossil fuels from our buildings and meet our legally binding emissions targets.

**NOW BE IT RESOLVED**, we call for the Massachusetts State Legislature, Department of Public Utilities, and Board of Building Regulations and Standards to commit to swift, just building decarbonization in the Commonwealth by acting at the state-level and allowing rapid municipal action;

**BE IT FURTHER RESOLVED**, we call upon the Massachusetts State Legislature to pass a law enabling municipalities to prohibit fossil fuel infrastructure in new construction and phase out fossil fuel infrastructure in existing buildings;

**BE IT FURTHER RESOLVED**, we call upon the Massachusetts State Legislature to change the Gas Code and G.L. c. 142 §13 in order to allow municipalities to deny gas permits;

**BE IT FURTHER RESOLVED**, we call upon the Department of Public Utilities to urgently and fully comply with the Massachusetts Office of the Attorney General's June 2020 petition: "Requesting an Investigation, pursuant to the Department of Public Utilities' authority under G.L. c. 164, §§ 76, 105A into the impact on the continuing business operations of local gas distribution companies as the Commonwealth achieves its target 2050 climate goals" (D.P.U. docket #20-80);

**BE IT FURTHER RESOLVED**, we call upon the Massachusetts State Legislature to align the mission of the Board of Building Regulations and Standards with achieving the Commonwealth's decarbonization goals;

**BE IT FURTHER RESOLVED**, Brookline commits to centering the need for a just transition in our climate efforts and to working with environmental justice, economic justice, and racial justice organizations, and we call upon the Massachusetts State Legislature, Department of Public Utilities, and Board of Building Regulations and Standards to do the same;

**BE IT FURTHER RESOLVED**, the Massachusetts State Legislature and Department of Public Utilities should ensure elective electrification and new construction codes do not increase rates or costs for low-income residents;

**BE IT FURTHER RESOLVED**, the Massachusetts State Legislature and Department of Public Utilities must take an active role in guaranteeing that the benefits of electrification can be realized by low-income households and environmental justice communities through funding assistance and deliberate program design;

**BE IT FURTHER RESOLVED**, a just transition demands the equitable creation and distribution of high-quality jobs as the effort to decarbonize our buildings and restore a safe climate is launched;

**BE IT FURTHER RESOLVED**, that the Town Clerk shall cause a copy of this resolution to be sent to State Representatives Elugardo, Vitolo, Coppinger, and Moran, to Senator Creem, and to Governor Charles Baker.

Or to take any other action in relation thereto.

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PETITIONER'S ARTICLE DESCRIPTION

Warrant Article 38: A Resolution Calling for Swift, Just Building Decarbonization in the Commonwealth, is complementary to Warrant Article 39: An Act Authorizing the Town of Brookline to Adopt and Enforce Local Regulations Restricting New Fossil Fuel Infrastructure in Certain Construction. Both Warrant Articles were brought forward by the co-petitioners of 2019's Warrant Article 21: Prohibition on New Fossil Fuel Infrastructure in Major Construction and both articles aim to draw attention to the need for state-level climate action to meet the urgency of our climate crisis.

Our resolution calls upon the Massachusetts State Legislature, Department of Public Utilities, and Board of Building Regulations and Standards to take specific actions committing to swift, just building decarbonization. The resolution states our town's values, presents our rationale for building decarbonization, and calls for specific state-level action. We are working with additional communities in the Commonwealth to pass similar resolutions to amplify this message and catalyze state-level change.

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SELECT BOARD'S RECOMMENDATION

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ADVISORY COMMITTEE'S RECOMMENDATION

XXX

ARTICLE 39X ARTICLE

Submitted by: Select Board, Lisa Cunningham, Jesse Gray, Steven Heiken, Werner Lohe, Paul Saner, Kathleen Scanlon, Cora Weissbourd

To see if the Town will vote to authorize and empower the Select Board to file a petition with the Massachusetts General Court for special legislation, as set forth below, to: (1) ratify the adoption, at the Fall 2019 Special Town Meeting under Warrant Article 21, an amendment to the Town's General By-Laws inserting Article 8.39 entitled "Prohibition on New Fossil Fuel Infrastructure in Certain Construction;" (2) authorize the Town to adopt and further amend general or zoning by-laws that regulate natural gas infrastructure; and (3) authorize the Building Commissioner to administer such by-laws, including through the withholding of building permits; provided, however, that the General Court may make clerical or editorial changes of form only to the special legislation, unless the Select Board approves amendments to the bill before enactment by the General Court; and provided further that the Select Board is hereby authorized to approve such amendments that are within the scope of the objectives of this petition:

AN ACT AUTHORIZING THE TOWN OF BROOKLINE TO ADOPT AND ENFORCE LOCAL REGULATIONS RESTRICTING NEW FOSSIL FUEL INFRASTRUCTURE IN CERTAIN CONSTRUCTION

Be it enacted as follows:

SECTION 1. Article 8.39 of the Town of Brookline's General By-laws, entitled "Prohibition on New Fossil Fuel Infrastructure in Certain Construction," is hereby ratified as adopted pursuant to Warrant Article 21 of the Town's Fall 2019 Special Town Meeting, and shall be in full force and effect as of the effective date of this act.

SECTION 2. Notwithstanding chapter 164 of the General Laws, section 13 of chapter 142 of the General Laws, the State Building Code, or any other general or special law or regulation to the contrary, the town of Brookline is hereby authorized to adopt and further amend general or zoning by-laws that restrict new construction or major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act.

SECTION 3. Notwithstanding section 7 of chapter 40A of the General Laws, or any other general or special law or regulation to the contrary, the Building Commissioner of the town of Brookline, or any designee thereof, shall be authorized to enforce restrictions on new construction and major renovation projects that do not qualify as fossil-fuel-free, as defined in section 4 of this act, including through the withholding of building permits.

SECTION 4. As used in this act, the term "fossil-fuel-free" shall refer to construction or renovation that results in an entire building or an entire

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condominium unit that does not utilize coal, oil, natural gas or other fossil fuels in support of its operation.

SECTION 5. This act shall take effect upon its passage.

Or to take any other action in relation thereto.

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#### PETITIONER'S ARTICLE DESCRIPTION

In November 2019, Brookline's Town Meeting overwhelmingly passed Warrant Article 21: Prohibition on New Fossil Fuel Infrastructure in Major Construction. Brookline's fossil fuel prohibition was the first outside California, the first in a cold weather climate, and the first to include major building renovations as well as new construction.

Brookline's prohibition attracted national attention and launched a regional domino effect. Over a dozen other Massachusetts towns and cities followed Brookline's lead and started to plan and launch similar building electrification efforts. The growing national building electrification movement also caught the attention of the gas industry, which launched deep-pocketed anti-electrification campaigns in Brookline and nationally.<sup>1</sup> A building electrification movement and countermovement blossomed.<sup>2</sup>

In July 2020, the Municipal Law Unit of the Massachusetts Attorney General's Office (MLU) reluctantly rejected Brookline's proposed bylaw. Although the MLU decision stated that the bylaw was consistent with the Attorney General's policy goals, the MLU

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<sup>1</sup> D'Angelo, C. (2019, December 8). The Gas Industry's Bid to Kill a Town's Fossil Fuel Ban. *Huffington Post*. [https://www.huffpost.com/entry/massachusetts-natural-gas-ban\\_n\\_5de93ae2e4b0913e6f8ce07d](https://www.huffpost.com/entry/massachusetts-natural-gas-ban_n_5de93ae2e4b0913e6f8ce07d)

DiChristopher, T. (2020, January 27). AGA takes steps to counter gas bans, state opposition to pipelines. *S&P Global Market Intelligence*. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/aga-takes-steps-to-counter-gas-bans-state-opposition-to-pipelines-56763558>

Drugmand, D. (2020, July 28). Unplugged: How the Gas Industry Is Fighting Efforts to Electrify Buildings. *DeSmog Blog*. <https://www.desmogblog.com/2020/07/22/unplugged-how-gas-industry-fighting-efforts-electrify-buildings>

Holden, E. (2020, August 20). Revealed: how the gas industry is waging war against climate action. *The Guardian*. <https://amp.theguardian.com/environment/2020/aug/20/gas-industry-waging-war-against-climate-action>

Leber, R. (2020, June 17). The Gas Industry Is Paying Instagram Influencers to Gush Over Gas Stoves. *Mother Jones*. <https://www.motherjones.com/environment/2020/06/gas-industry-influencers-stoves/>

Vardi, Itai. (2020, August 19). National Grid Lobbied Against Massachusetts Bills to Expand Renewable Energy. *Energy and Policy Institute*. <https://www.energyandpolicy.org/national-grid-lobbied-against-massachusetts-bills-to-expand-renewable-energy/>

<sup>2</sup> Margolies, J. (2020, February 4). 'All-Electric' Movement Picks Up Speed, Catching Some Off Guard. *New York Times*. <https://www.nytimes.com/2020/02/04/business/all-electric-green-development.html>

determined that the bylaw was preempted by existing state law – the gas code, building code, and general laws regulating uniform utility services.<sup>3</sup>

We are living in a climate emergency. As we write, raging fires, devastating storms, floods, heat, and droughts are ravaging our planet. Yet, our state laws, regulations, lawmakers, departments, and boards still assume that fossil fuels are beneficial and necessary. The Massachusetts State Legislature, Department of Public Utilities, and Board of Building Regulations and Standards are all legally bound by a statewide limit of net-zero greenhouse gas emissions by 2050.<sup>4</sup> Without aggressive, statewide building decarbonization policies, building codes aligned with our climate goals, and a thoughtful, planned transition away from fossil fuels, we will be unable to meet our legally binding statewide emissions targets. Our outdated legacy laws and systems – here and everywhere - must change immediately for us to have any hope of addressing our climate crisis.<sup>5</sup> The state must act with the urgency demanded by this moment.

In 2018 the UN Intergovernmental Panel on Climate Change stated that in order to prevent catastrophic global warming we need to reduce carbon emissions to ~45% of 2010 levels by 2030 and reach net zero by approximately 2050.<sup>6</sup> Building emissions represent over 50% of greenhouse gas emissions in the Commonwealth and over 70% of the greenhouse gas emissions in the state’s urban areas.<sup>7</sup> Therefore, achieving the Commonwealth’s

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<sup>3</sup> July 21, 2020 decision from the Municipal Law Unit of the Massachusetts Attorney General’s Office accessed via MLU decision lookup:  
<https://massago.onbaseonline.com/MASSAGO/1801PublicAccess/mlu.htm>.

<sup>4</sup> Legally binding statewide net-zero emissions goal taken from the Office of the Attorney General’s June 2020 petition: “Requesting an Investigation, pursuant to the Department of Public Utilities’ authority under G.L. c. 164, §§ 76, 105A into the impact on the continuing business operations of local gas distribution companies as the Commonwealth achieves its target 2050 climate goals” (D.P.U. docket #20-80)”: “See the Global Warming Solutions Act (“GWSA”), St. 2008, c. 298, codified at M.G.L. c. 21N; Executive Office of Energy and Environmental Affairs’ (“EOEEA”) Determination of Statewide Emissions Limit for 2020 (Apr. 22, 2020), *available at* <https://www.mass.gov/doc/final-signed-letter-of-determination-for-2050-emissions-limit>; (setting a legally binding statewide limit of net zero greenhouse gas emissions by 2050, defined as 85 percent below 1990 levels); State of the State Address (Jan. 21, 2021) (Governor commits to achieving net-zero greenhouse gas emissions by 2050), *available at* <https://www.mass.gov/news/governor-baker-delivers-2020-state-of-the-commonwealth-address>.” The Town of Brookline has committed to a goal of 80% reduction in greenhouse gas emissions from 1990 levels by 2050.

<sup>5</sup> Pontecorvo, Emily. (2020, August 10). Does your state want to cut carbon emissions? These old laws could be standing in the way. *Grist*. <https://grist.org/energy/does-your-state-want-to-cut-carbon-emissions-these-old-laws-could-be-standing-in-the-way-buildings-heat-pumps/>

<sup>6</sup> United Nations Intergovernmental Panel on Climate Change (2018, October 8). Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments. <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>

<sup>7</sup> For Massachusetts building emissions data see page ES-8: “Buildings consume over 50 percent of the energy used in Massachusetts and are therefore responsible for the greatest GHG emissions of any sector.” Bowles, I. (2010). *Massachusetts Clean Energy and Climate Plan for 2020*. <https://www.mass.gov/files/documents/2016/08/sk/2020-clean-energy-plan.pdf>.

Building emissions in Boston were 70.6% in 2017. See City of Boston (2017). *Boston’s Carbon Emissions*. <https://www.boston.gov/departments/environment/bostons-carbon-emissions>.



# 11.A.

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mandatory greenhouse gas emissions targets will require decarbonization of the buildings and heating sector.

We propose two complementary warrant articles in response to the MLU's ruling, both intended to pressure the legislature to commit to climate action. With Warrant Article 39: An Act Authorizing the Town of Brookline to Adopt and Enforce Local Regulations Restricting New Fossil Fuel Infrastructure in Certain Construction and Warrant Article 38: A Resolution Calling for Swift, Just Building Decarbonization in the Commonwealth, we are offering a two-pronged strategy.

In essence, the home rule petition requests the state legislature to grant Brookline local authority to implement Warrant Article 21. If the legislature allows the petition, Brookline would have the unique power to implement our fossil fuel prohibition. To be clear, the end goal is not for our town to possess unique building electrification powers. Instead, this petition will pressure the state legislature to focus on its legacy laws and systems and continue to call local and statewide attention to the need for state-level action. The resolution then calls for the Massachusetts State Legislature, Department of Public Utilities, and Board of Building Regulations and Standards to commit to swift, just building decarbonization and clearly articulates the goals and values of our town.

Brookline's fossil fuel prohibition, and the overwhelming support it received in Town Meeting, changed the narrative in Massachusetts and nationally. Electrifying new construction and major renovations, which seemed difficult just a few years ago, is now understood as practical, cost-effective, politically attainable – and urgent. The movement to electrify buildings is growing, and we are eager to continue the fight for a livable planet at the state-level.

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## SELECT BOARD'S RECOMMENDATION

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## ADVISORY COMMITTEE'S RECOMMENDATION

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## **Inflammables**

Applicant: Emile Heraiki  
Location: 850 Commonwealth Ave

### **Application Details:**

Application for Emile Heraiki, 850 Commonwealth Ave, , for the keeping, storage and use of 4 underground gasoline tanks total capacity of 32,000 gallons, 2 above ground gasoline tanks total capacity of 700 gallons 270 gal of motor oil and 50 gals of anti-freeze at 850 Commonwealth Ave.

### **Report (Attached):**

Fire Department (Approved – with clarification see attached)  
Building Department (Approved)



TOWN OF BROOKLINE  
*Massachusetts*

**FIRE DEPARTMENT**  
FIRE PREVENTION DIVISION  
PUBLIC SAFETY BUILDING

David Randolph  
Deputy Chief, Fire Prevention

350 Washington Street  
PO Box 470557  
Brookline MA 02447-0557  
Office: 617-730-2270  
Fax: 617-264-6491

October 15, 2020

**Inflammables License Transfer**  
**850 Commonwealth Ave.**

The Fire Department has reviewed the application and found that the (2) 700 gallon above ground storage tanks (AST'S) for gasoline are being applied for incorrectly by the applicant. The applicant has informed us that the reference for this amount is for miscellaneous inflammables used in relation to the automotive repair industry. There are currently no above ground storage tanks for gasoline on the property, only below ground storage tanks for gasoline.

The Fire Department approves the license transfer with the omission of the (2) 700 gallon above ground storage tanks for gasoline listed on the application, as well as having the applicant amend the application to reflect the miscellaneous storage of inflammables and their projected amount.

Respectfully,

David Randolph  
Deputy Chief  
Fire Prevention Group



**TOWN of BROOKLINE**  
*Massachusetts*

**BUILDING DEPARTMENT**

**Daniel F. Bennett**  
Building Commissioner

**INTEROFFICE MEMORANDUM**

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**Date:** October 14, 2020

**To:** Mel Kleckner  
Town Administrator

**From:** Daniel Bennett  
Building Commissioner

**Re:** 850 Commonwealth Ave – Storage of Inflammables

The Building Department is in receipt of your memo dated September 30, 2020 requesting a report on an application from Emile Heraiki, for the keeping, storage and use of gasoline in 4 underground gasoline tanks with a capacity of 32,000 gallons, 2 aboveground gasoline tanks with a capacity of 700 gallons, 270 gallons of motor oil and 50 gallons of anti-freeze.

The Building Departments has no objection to the application.

SELECT BOARD MEMORANDUM

TO: Daniel Bennett, Building Commissioner  
John Sullivan, Chief of Fire

FROM: Melvin Kleckner, Town Administrator

RE: Storage of Inflammables

DATE: September 30, 2020

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May we please have reports on the attached applications:

Applicant: Emile Heraiki

Locations: 850 Commonwealth Ave

License Type: Gasoline

This application for Emile Heraiki, 850 Commonwealth Ave, , for the keeping, storage and use of 4 underground gasoline tanks total capacity of 32,000 gallons, 2 above ground gasoline tanks total capacity of 700 gallons 270 gal of motor oil and 50 gals of anti-freeze at 850 Commonwealth Ave.

This application will go before the Board on **October 20, 2020**. May we please have the report no later than **October 14, 2020?**

Thank you.



Hearings  
Oct 20

**OFFICE OF SELECT BOARD  
333 WASHINGTON STREET  
BROOKLINE, MA 02445  
(617) 730-2200**

**INFLAMMABLES**  
**FUEL, OIL AND GASOLINE APPLICATION**

Application must be filed with plans.

Must be advertised two weeks prior to the hearing. Ads \$10.50 check from application made payable to the TAB. Check and application submitted to the Select Board's Office

Once license is approved, Town Clerk handles renewal.

If any changes in capacity of tanks, must be approved by the Select Board.

No fee.

During COVID-19 pandemic the Select Board's Office will be conducting the hearings via remote access. Please provide an email address so that we may notify you.

Email Address: heraiki@gmail.com





# Town of Brookline Select Board's Office

## Application For Gasoline License

(Including Other Inflammable Materials)

Date 9/30/2020

For the lawful use of the herein described building(s) and other structure(s), application is hereby made in accordance with the provisions of Chapter 148 of the General Laws, for a license to use the land on which such building(s) or other structure(s) is/are or is/are to be situated.

Location of land 850 Commonwealth Ave.  
(Street and Number)

Nearest cross street Amory St.

Owner of land Emile Heraiki

Address 170 Porter St. Westwood, MA 02090

Dimensions of land: Ft. front 39.95 Ft. deep 75.00 Area sq. ft. \_\_\_\_\_

Number of buildings on land, the use of which requires land to be license one

GASOLINE: Tanks of 0 automobiles (Lubritorium)

No. of Tanks Underground 4 Total Capacity 32,000 gals.

No. of Tanks Aboveground 2 Total Capacity 700 gals.

Other Inflammable Materials in Metal Containers Aboveground:

Motor Oil 270 gals

Anti-Freeze 50 gals

Kerosene 0 gals

\_\_\_\_\_ gals

\_\_\_\_\_ gals

### APPROVED

Fire Commr. \_\_\_\_\_

Bldg. Commr. \_\_\_\_\_

### DISAPPROVED

Fire Commr. \_\_\_\_\_

Bldg. Commr. \_\_\_\_\_

Comm. Ave Gas & Service  
Name of Firm

[Signature]  
Signature

850 Comm. Ave Boston, MA 02215  
Address

Tel. No 617-232-1188

HEARING \_\_\_\_\_ P.M. \_\_\_\_\_

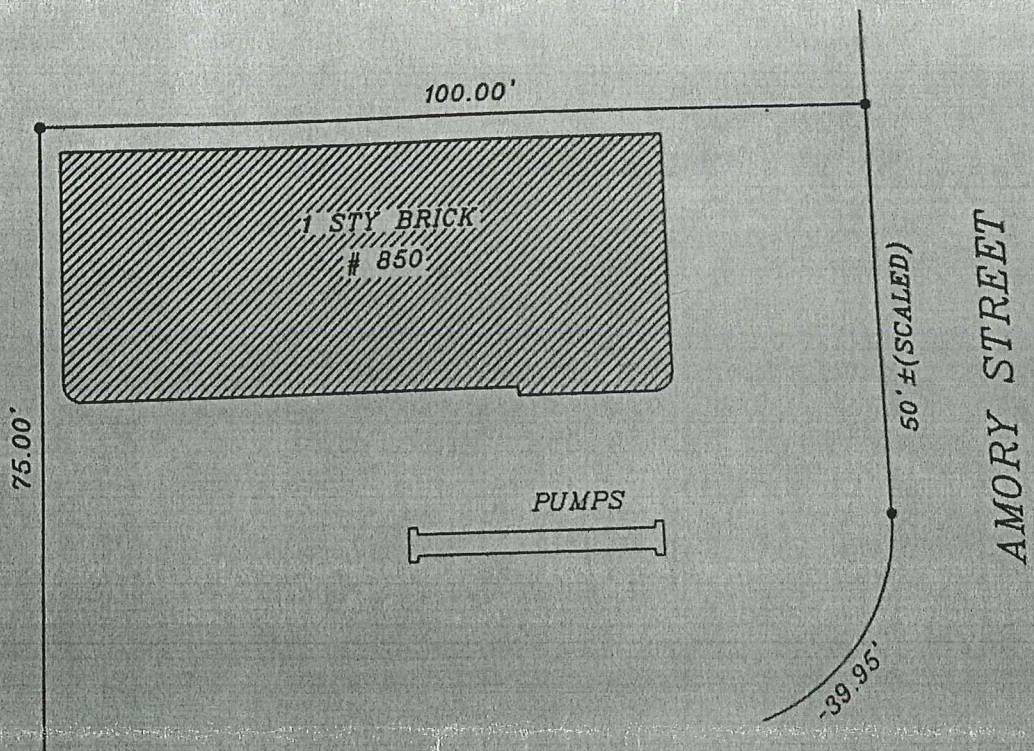


## NORTHERN ASSOCIATES, INC.

401 SOUTH BROADWAY LAWRENCE, MA 01843-3522 TEL: (978) 837-3335 FAX: (978) 837-3336

MORTGAGOR: EMILE HERAIKI  
LOCATION: 850 COMMONWEALTH AVE  
CITY, STATE: BROOKLINE, MA  
DATE: 8/16/07

DEED REF: 10514/377  
PLAN REF: ASSESSORS  
SCALE: 1"=20'  
JOB #: 207/03851





## 12.A.

The plot plan of land must be drawn to scale and clearly show the following: Boundaries of the land to be licensed, all buildings or other structures situated or to be situated thereon, the use of which requires land to be licensed, and the distances from boundary lines; size of such buildings or other structures and occupancy thereof, and the material of which they are, or are to be constructed.

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SPACE BELOW MAY BE USED FOR PLOT PLAN

*Please see next page.*

12.A.

Updated Inflammable license based on the Fire  
Department inspection.



# Town of Brookline Select Board's Office

## Application For Gasoline License

(Including Other Inflammable Materials)

Date \_\_\_\_\_

For the lawful use of the herein described building(s) and other structure(s), application is hereby made in accordance with the provisions of Chapter 148 of the General Laws, for a license to use the land on which such building(s) or other structure(s) is/are or is/are to be situated.

Location of land \_\_\_\_\_  
(Street and Number)

Nearest cross street \_\_\_\_\_

Owner of land \_\_\_\_\_

Address \_\_\_\_\_

Dimensions of land: Ft. front \_\_\_\_\_ Ft. deep \_\_\_\_\_ Area sq. ft. \_\_\_\_\_

Number of buildings on land, the use of which requires land to be license \_\_\_\_\_

GASOLINE: Tanks of \_\_\_\_\_ automobiles (Lubritorium)

No. of Tanks Underground \_\_\_\_\_ Total Capacity \_\_\_\_\_ gals.

No. of Tanks Aboveground \_\_\_\_\_ Total Capacity \_\_\_\_\_ gals.

Other Inflammable Materials in Metal Containers Aboveground:

Motor Oil \_\_\_\_\_ gals

Anti-Freeze \_\_\_\_\_ gals

Kerosene \_\_\_\_\_ gals

\_\_\_\_\_ gals

\_\_\_\_\_ gals

### APPROVED

Fire Commr. \_\_\_\_\_

Bldg. Commr. \_\_\_\_\_

### DISAPPROVED

Fire Commr. \_\_\_\_\_

Bldg. Commr. \_\_\_\_\_

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

Tel. No \_\_\_\_\_

HEARING \_\_\_\_\_ P.M. \_\_\_\_\_

*Petitioner must submit detailed plan, specification and perspective (See other side)*